JD–92–04
Cleveland, OH

STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GOODRICH CORPORATION, LANDING
GEAR DIVISION, CLEVELAND
PLATING OPERATIONS

and Case No. 8-CA-33598-1

INTERNATIONAL UNION, UNITED
AUTOMOBILE AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW

Steven Wilson, esq., for the General Counsel.
Bryan O'Connor, esq., of Cleveland Ohio,
for the Charging Party.
David P. Hiller, esq., and Melanie Webber, esq.,
of Columbus, Ohio, for the Respondent.

DECISION

Statement of the Case

ERIC M. FINE, Administrative Law Judge. This case was tried in Cleveland, Ohio, on June 2 to 6, 2003. The charge was filed on August 16, 2002, by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (the UAW) against Goodrich Corporation, Landing Gear Division, Cleveland Plating Operations (Respondent).[1] The complaint, as amended at the hearing, alleges the UAW and its Local 2333 (collectively referred to as the Union) have been recognized by Respondent as the exclusive representative of the collective bargaining unit listed in the complaint located at Respondent's 2800 East 33rd Street, Cleveland, Ohio facility (the Plating plant). The complaint alleges that since March 15, by letter, and by verbal requests of April 5, 15, 29, 30, and May 1, the Union has requested Respondent furnish it with certain information listed in the March 15 letter. The complaint also alleges that since April 5, the Union has verbally requested Respondent furnish the Union with information relating to productivity at the Plating plant. The complaint alleges the requested information is necessary and relevant for the Union's performance of its duties as exclusive collective bargaining representative and that since April 5, Respondent has failed and refused to furnish the Union with the requested information in a timely and complete manner in violation of Section 8(a)(1) and (5) of the Act. The complaint alleges that since May 6, certain of Respondent's employees represented by the Union ceased work and engaged in a protected strike caused and prolonged by Respondent's unfair labor practices. The complaint alleges that since June 14, the striking employees made an unconditional offer to return to work to their former or substantially equivalent positions and that since June 16, Respondent has failed to reinstate certain named employees,[2] and failed to reinstate other named employees at the time

[1] All dates are 2002 unless otherwise indicated.

[2] The complaint names one category of employees, who Respondent allegedly unlawfully refused to reinstate following the employees' unconditional offer to return to work, and another

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of their unconditional offer to return to work, although it did eventually reinstate the second group of named employees. It is alleged in the complaint that by its failure to reinstate certain employees and its delay in reinstating others, Respondent has violated Section 8(a)(1) and (3) of the Act.[3]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and Respondent, I make the following

Findings of Fact[4]

I. Jurisdiction

Respondent, a corporation, with a facility located in Cleveland, Ohio (the Plating plant) has been engaged in the plating of landing gear parts for the airline industry. Respondent annually purchases and receives at the Plating plant goods valued in excess of $50,000 directly from points outside the state of Ohio. Respondent admits and I find it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the UAW and Local 2333, are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Respondent's operations

Respondent maintains two facilities in Cleveland the Plating plant and a machining and assembly plant located at Marble Avenue (Marble Ave. plant). The Marble Ave. plant machines landing gear components, which are sent to the Plating plant for coating then returned to the

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category of employees who suffered unlawfully delayed reinstatement. At the hearing, counsel for the General Counsel successfully moved to amend the complaint to delete William Jones from the list of alleged discriminatees; and to shift alleged discriminatees James Ratliff and Jose Vanderdys from those alleged not to have been reinstated to the category of employees with alleged unlawfully delayed reinstatement dates of December 5 for Ratliff, and January 2, 2003, for Vanderdys.

[3] The parties stipulated at the hearing that should the alleged discriminatees named in the complaint, as amended at the hearing, be found to be unfair labor practice strikers, their reinstatement rights as to date, position, back pay, other benefits, and seniority will be resolved in a compliance proceeding, absent a settlement following the unfair labor practice litigation.

[4] In making the findings herein, I have considered the demeanor of all witnesses, the content of their testimony, and the inherent probabilities of the record as a whole. In certain instances, I have credited some but not all of what a witness said. See *NLRB v. Universal Camera Corporation,* 179 F. 2d 749, 754 (C.A. 2), reversed on other grounds 340 U.S. 474 (1951). All of the witnesses' testimony and record evidence has been considered in making these findings. Multiple witnesses for each side testified about the bargaining sessions at issue. I have concluded that many of the witnesses in this proceeding tended to shade their testimony to advance the cause of the party calling them. As a result, I have credited certain portions of a witness' testimony, based on their demeanor as to that testimony, the specificity of their recollection and the record as a whole, while not crediting other aspects of the same witness' testimony. Testimony that is not specifically mentioned in this decision has been considered, but rejected, or it is repetitive of the testimony that has been cited and credited. Specific credibility resolutions will be discussed in more detail during the course of the decision.

Marble Ave. plant for assembly. Both plants are part of Respondent's Landing Gear Division, which includes two other facilities in the United States, one in Canada, and one in Poland.

The UAW and Local 2333 represent a bargaining unit at the Plating plant with about 58 employees and a second bargaining unit at the Marble Ave. plant including about 300 employees.[5] The dates of the most recent collective bargaining agreement at the Plating plant leading to the negotiations at issue herein were May 1, 1999, through April 30. William Minor has been an International Representative for the UAW Region 2B since 1993 and, at the time of the 2002 Plating plant negotiations, had served as the lead negotiator for the Union for a total of six prior contracts for the two Cleveland bargaining units. John Jordan, the former general director of human resources for the Landing Gear Division, served as lead negotiator for Respondent for the same six contracts. Minor was the Union's lead negotiator for the Plating contract during the 2002 negotiations, and Jordan came out of retirement as a paid consultant to serve as Respondent's lead negotiator for those negotiations.

B. Minor's March 15 letter

Minor credibly testified he authored a letter requesting information, dated March 15, to Tom Lemin, who at the time was Respondent's director of human resources for the Plating and Marble Ave. plants. The March 15 letter was written in preparation for negotiations for the Plating plant's 2002 contract. Minor testified the process for mailing letters in his office is he prepares a draft and gives it to a secretary for typing. The secretary returns the typed draft to Minor for proofing and his signature. Minor then returns it to the secretary for mailing. Minor testified he followed this procedure for the March 15 letter. Minor testified he signed the letter on March 15, which is the date he forwarded it for mailing. Minor testified the letter was to be sent by regular mail, as was his practice for information requests.

Mary Keck works for the UAW as a clerical employee. Keck credibly testified to the following: Once an International Representative signs a letter, copies are made for circulation and filing, and the letter is then posted in an envelope, run through a postage meter and placed in an outgoing mail basket. There is a postal mailbox in the driveway outside the office building. Anyone of 23 people working in the office takes the mail from the outgoing basket and drops it in the mailbox. Keck's initials appear on Minor's March 15 letter, signifying she typed the letter and that she placed the letter in the out going mail box. Keck typed the March 15 date on the first page of the letter. Keck's practice was for Minor to sign the letter the day she typed it.[6] Keck retains her own copies of the correspondence she prepares and pursuant to her search the morning of her testimony, she found the March 15 letter in her personal correspondence file.[7] Keck testified that to her knowledge, Minor's March 15 letter was not returned to the Union's office.[8]

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[5] The unit description for the Plating plant bargaining unit is set forth in the complaint and is not in dispute in this proceeding.

[6] The second page of the letter is also dated March 15, which Keck testified was placed there by a computer macro showing the letter was typed on March 15. However, another letter for Minor, which Keck typed on May 23, did not have the computer generated date on the second page. Keck had no explanation for the missing date.

[7] Keck did not have a specific recollection of the March 15, letter. On a monthly basis Keck could originate between 50 and hundreds of mailings.

[8] I have credited Minor's testimony that he did draft and sign the letter dated March 15, to Lemin requesting information, with intent to have the letter mailed through his office mailing procedures on that date. In this regard, Keck, who I found to be a credible witness, testified she

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Minor requested the following information in the March 15 letter: [9]

1. A list of all hourly rated employees, setting forth their classifications, present hourly rate, date of hire, date of birth –both male and female.
2. A copy of the present contract of sick and accident insurance benefits; the amount received by each employee per week, and the premium the Company pays for this coverage per month.
3. A copy of the present contract on hospitalization and medical coverage and the monthly premiums for family and single coverage, including any contributions which may be required by employees.
4. The amount of life insurance the employees are covered for and the monthly premium paid by the Company.
5. The number of days of vacation received by each employee.
6. A copy of the present pension/401(k) contract and the cost/contribution for same. This is to include name, age, and date or retirement of those already retired. [10]

C. The April 5 bargaining session

The first negotiation session for a new contract at the Plating plant was held on April 5.[11] The Union's negotiating committee included: Minor, Joe Cantale, president of Local 2333; Jerry Valentine, a chief shop steward for Local 2333; Lou Pestello, the recording secretary of Local 2333; Eddie Busler, a chief shop steward for Local 2333; Dave Morrow and Phil Van Almen. Cantale, Valetine, and Pestello worked at the Marble Ave. plant. Busler, Morrow, and Van Almen worked at the Plating plant. Respondent's negotiating committed included Jordan, Lemin, Sarah Niebauer, a human resources generalist, and Russ Tucholski, plant manager of the Plating plant. Doug Wright, a vice president of the Landing Gear Division, was also present. The named individuals, aside from Wright, attended all the negotiations sessions leading to the May 6 strike.

Minor credibly testified that the majority of the April 5 meeting was spent with a presentation by Wright concerning the strategic plan for the entire Landing Gear Division,

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found a copy of the letter in her files and that her initials on the letter and past practice reveal she typed it on March 15. I also note that Jordan, who had an extensive history of negotiating contracts with Minor, admitted it was Minor's practice, during prior negotiations, to send a letter requesting information before negotiations commenced. I have also credited the testimony of General Counsel witnesses Eddie Busler, Joe Cantale, and Jerry Valentine, who were on the Union's negotiating committee, that they saw a copy of Minor's March 15, letter prior to the start of negotiations. Since I have concluded that Minor crafted the document, I have also concluded it was likely and that he did in fact display it to certain Union bargaining committee members. Respondent's witnesses have denied receipt and knowledge of Minor's March 15, letter until it May 13, after it was forwarded to Respondent's counsel by the Region 8, following the filing of Minor's initial unfair labor practice charge in this matter. For reasons set forth in more detail below, I do not credit Respondent's claims that the letter was not received in a timely fashion.

[9] Respondent's counsel stated at the hearing there is no dispute as to the relevancy or the availability of the information requested in Minor's March 15, letter.

[10] Minor admitted that, although requested in the March 15 letter, the amount of medical contributions required of employees; the amount of the weekly sickness and accident benefit; and the amount of life insurance coverage were set forth in the 1999 contract.

[11] The parties also met on April 12, 15, 22, 23, 24, 25, 26, 29, 30, and May 1, prior to the start of the May 6, strike.

although Wright also specifically referred to the Cleveland operations. Wright's presentation included a description of some of orders Respondent had lost, and some of the problems they faced in the future with the market down turn. Wright said Respondent signed a long-term contract with Boeing, its major customer, at a price reduction. Wright spoke of an expected down turn in future business, and about productivity. Similarly, Jordan testified Wright gave a state of the business overview of the Landing Gear Division. Jordan testified Wright's presentation indicated that overall business conditions were not great. Jordan testified Wright's presentation included a power point slide show taken from portions of the Landing Gear Division's strategic plan. Niebauer testified that her notes, taken during the April 5 meeting, reveal that Jordan opened the meeting with remarks about the state of the economy, which Niebauer characterized in her notes as "gloom and doom." Niebauer testified her notes read that, in response to Minor's request for a copy of the strategic plan, Wright said,

> No copy but it is important stuff. All these consolidations going on. Bombard Air # 3, air frame in the world. 9/11 not solely to blame. We were in a tailspin before. We were over producing anyway….This year's most difficult plan. Don't understand dynamics of 9/11. Our performance is dismal.

Niebauer testified Wright was referring the Landing Gear Division's performance when he said our performance is dismal. Niebauer testified Wright said the customers were "pissed off" because we were behind in our deliveries.

Niebauer's notes go on to state: "4 themes follow". At one point in the notes it states, "2nd Major Theme" was to "Improve throughput" which included, "implement new planning system, six Sigma data, productivity increase, dedicated equipment." The notes reflect that the fourth major theme was "LEAN". The notes read following LEAN, "Refocus but overall in good shape. Past due are decreasing, productivity is increasing, more product shipping." Niebauer testified these references in the notes related to Wright's presentation.

Niebauer credibly testified that one of the slides Wright showed at his presentation contains a graph entitled, "Productivity-Cleveland Machining." Niebauer testified the graph was in reference to the Marble Ave. plant and does not apply to Plating plant. Niebauer credibly testified that, after the slide was shown, Van Almen asked, can you produce separate quality, scrap, and productivity numbers for the Plating plant as they had for the Marble Ave. plant.[12] Niebauer testified Tucholski looked at Van Almen and said he had quality and scrap numbers and he would look into the rest of them. Niebauer, at one point in her testimony, credibly stated that Tucholski said he did not have productivity numbers for Plating. Niebauer credibly testified Tucholski said "he was going to get qualities and scrap numbers for plating, that he couldn't get productivity. He could get everything Bill wanted but productivity."[13] Wright then said Tucholski

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[12] Similarly, Van Almen testified that he asked Wright if he could provide productivity numbers for the Plating plant separate from the Marble Ave. plant numbers.

[13] Considering her demeanor, I found Niebauer's description of the April 5 meeting, which was for the most part buttressed by her notes, to be the most accurate description of all of the witnesses. I do not credit Minor's claim that Tucholski said he could get productivity figures during the meeting. This assertion was undercut by the testimony in Minor's prehearing affidavit, where Minor said Respondent informed the Union at the meeting that they did not have productivity or utilization data for the Plating plant. I did not find Minor's explanation at the hearing for the sworn testimony in his affidavit to be very convincing. General Counsel witness Valentine, whose testimony vacillated about what transpired at the meeting, belatedly admitted that the Union was informed Respondent could not get productivity data because they do not

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separate the data. In view of these admissions, and Niebauer's credited testimony, I do not credit the testimony of Minor, Valentine, or any of the other Union witnesses who testified that Tucholski said at the meeting he could provide the Union with productivity data during the meeting. Rather, I credit Niebauer's testimony that Wright directed Tucholsky to see if it made sense to develop productivity numbers for the Plating plant and Tucholski said he would do so.

It was the contention of Respondent's witnesses that Respondent could not and did not measure productivity at the Plating plant because they did not have standard hours calculations made by industrial engineers for the plating processes, while standard hours calculations had been made at the Marble Ave. plant and were used to measure productivity there. However, I do not credit the testimony of Wright, Jordan, Lemin, and Tucholski concerning their claims that Tucholski explained to the Union that Respondent did not have standard hours for the Plating plant as the reason he could not calculate productivity. There is no such explanation reflected in either Lemin or Niebauer's notes of the meeting, nor did Niebauer testify that such an explanation was given. Rather, Lemin's notes just state "Separate us out from Marble," to which Tucholski responded, "Everything except productivity." I also do not credit Jordan, Lemin, Wright, or Tucholski concerning their claims that Tucholski gave an explanation, during the meeting, about alternative metric measurements Respondent maintained at the Plating plant, beyond stating, as Niebauer testified, that he could provide everything Van Almen asked for aside from productivity. In this regard, I found the testimony of Respondent's witnesses about this meeting to be somewhat inconsistent and of a disingenuous nature. For example, Jordan testified that he did not take Van Almen's request for information seriously because Van Almen was not the lead negotiator and Jordan viewed the remark more as a comment than a request for information. Yet, Niebauer testified there were no ground rules prohibiting Van Almen, as a member of the Union's negotiating committee, from making an information request. She also testified that Tucholski said that, "he was going to get qualities and scrap numbers for plating, that he couldn't get productivity. He could get everything Bill wanted but productivity." Wright also testified he took Van Almen's request serious enough to have Tucholsky investigate Van Almen's inquiry.

I do not credit the claims of Respondent's witnesses that they could not measure productivity at Plating because they do not have standard hours. Rather, at various points in their testimony, Tucholski, Wright, and Lemin testified that, aside from standard hours, Respondent had other means available to measure performance at the Plating plant. I have concluded Respondent's officials, in fact, used the other measurements to monitor the productivity at the Plating plant. In this regard, Wright testified that because Respondent did not have standard hours calculations for the Plating plant, Respondent could not measure productivity at Plating and therefore he could not and did not criticize it at the April 5 meeting. However, Wright then testified concerning Plating that, "We use other ways to measure productivity or performance." Wright testified that Cleveland Plating "was more effective" than Respondent's other plating facilities. Wright then admitted he had a way to determine if he was satisfied with the output at the Plating plant. He testified, "If I was not happy with the output I could have criticized them." Wright testified if their utilization or throughput was deficient, Wright could you have criticized them. Wright testified he was relying primarily on throughput to compare Respondent's plating facilities. He testified that Cleveland Plating was completing the same type of parts at a much quicker rate than Respondent's other plating facilities. Wright testified performance is measured at the Plating plant in a number of ways, but that the key measure was how long would took to completely plate a part, which is called throughput.

Similarly, Tucholski testified Respondent measures performance at Plating by calculating "utilization", which measures the amount of time the employees are engaged in direct labor as opposed to being idle. While denying Respondent measured productivity at Plating, Tucholski testified that "utilization" is a metric that Respondent calculates to determine how productive the

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should look into it to see if it made sense to develop productivity numbers and Tucholski said he would look into it.

Niebauer's notes of the April 5 meeting read, in pertinent part:

> Jerry: 911 didn't impress him. 11 million in cost is Co's fault/
> Plate: World class a month ago what changed. Since Russ back were "almost world class"
> Doug: Pretty proud about Plate. Let's not argue about semantics.
> Jerry: PPI messed up C17. Plating fixed the vendors mistake so that means they're world class. Get rid of Russ.
> Doug: Plate is buried in parts. What do want us to do. Work to make it better. Good facility, good people. Strategic intent to build Plating facility.
> Phil: Want individu #'s @ Plating productivity, quality (scrap)
> Doug: Calculate productivity is different at each plant. Agree we should have site metrics.
> Eddie: Still problems at plating, so help us help ourselves.
> Phil: We need an MRB engineer!
> Bill: We've asked @ last 4 negot for separate Plating #'s[14]
> Doug: Should do better job @ posting & discussing metrics. We'll get people involved.

Plating work force is. When asked if he was constantly looking for ways to make the employees more productive, Tucholski testified, "I would use the word, 'continuous improvement.'" Tucholski testified that in January through April 2002, the Cleveland Plating employees were significantly exceeding Respondent's "utilization" plan. Tucholski testified that "throughput" is another metric measurement Respondent uses at the Plating plant. Tucholski testified "throughput" is the actual number of days it takes to get parts through the Plating plant. When asked it if was a measure of how productive the facility is, Tucholski fenced with counsel stating, "It—it's one of the measures that we use to gauge the health of the operation." Tucholski admitted Respondent also tracked "on time delivery." He then conceded that this was one of the tools in measuring how productive the facility is. Tucholski also testified that Respondent uses health and safety metrics, which included lost time due to injury. Tucholski agreed that the less time lost on the job injury the more productive the facility. Tucholski testified Respondent also tracks program hours, as to the actual number of hours they a spending on a program like the 747, or 767 during the plating process. He testified that the goal is to meet the budgeted hours that are established during the year. The less hours spent the better off the facility. Tucholski testified that all of these charts are used to measure the health of the operation.

I also note that while Tucholski claimed that, during the April 5 meeting Wright asked him to look into whether developing standard hours at Plating was feasible, Tucholski testified that prior to April 5, he had a couple of meetings with Respondent's capacity planning manager to determine whether to develop standard hours at the Plating plant. He testified that the Plating plant had 1,700 operations that had to be engineered and that it would take months to complete such a project. Thus, even assuming I were to credit the testimony of some of Respondent's witnesses that the Union was only asking for productivity based on a standard hours calculation, which I do not; Tucholski had substantial information at his disposal at the meeting, as to the length of time it would take to develop this metric for Plating, but he failed to provide it to the Union. Rather, the Union was left to guess concerning its inquiry about productivity information with Respondent's open ended response to the Union's information request.

[14] Lemin's testimony reveals that, during the meeting, Minor stated that the Union had asked during the last four sets of negotiations for productivity figures for the Plating plant separate from the Marble Ave. plant.

Niebauer testified that there was a slide presented by Wright that had under the caption, "Continue Promoting a Culture of Continuous Improvement," a bulleted statement reading "World Class in plating processes." She testified Wright talked about the Cleveland Plating facility as being almost world class. Niebauer testified that Wright said he wanted all of the components of the Landing Gear Division to become world class. Van Almen credibly testified Wright said the Plating plant is already almost world class and Valentine responded they were world class before Tucholski came back as plant manager, and now they were just almost world class. Similarly, Valentine credibly testified he responded to Wright's almost world class remark by stating they had been world class before Tucholski returned as plant manager. Valentine testified, "I believe my comment to Doug Wright was, I would fire Russ Tucholski if I was world class and I sent one guy down there and he made us almost world class, …".

Jordan, Lemin, Tucholski, and Wright confirmed Van Almen and Valentine's description of the above conversation. However, Jordan incredibly claimed that he viewed Wright's "almost world class" remark as a "tremendous compliment." Yet, Wright testified he used the term "almost world class" because "from a management perspective, you can never be happy with the performance of any site. You're always looking for continuous improvement. I didn't want to say that any site was world class implying that we had ended our journey for improvement." Wright testified that he made the comment about the Plating plant being almost world class, when one of Respondent's slides was posted containing a bullet point under the "Continuous Improvement" caption that says "world class in plating processes." Similarly, Lemin testified he understood Wright's remark to mean that there is always room for improvement, the bar always gets higher and higher, so they need to do things better and better.

Respondent's witnesses credibly identified two documents depicting power point slides that Wright showed during the meeting. One of the documents presented by Wright is entitled "Summary" and includes the caption, "Continue Promoting a Culture of Continuous Improvement," which includes four bulleted items reading:

> Flexibility in manpower and equipment
> Embrace LEAN Principles
> Increased involvement of all employees
> World Class in plating process

While Wright repeatedly raised productivity issues during his presentation to the Union, Respondent's officials attempted to obfuscate the obvious in order to down play the relevancy of the Union's request for productivity records. Niebauer testified that during the April 5, meeting Wright stated he wanted Landing Gear to become actively involved with the LEAN principals.[15] Wright testified LEAN is a way to improve your performance throughout the organization. However, he attempted to side step question of whether LEAN encompassed efforts to improve productivity. When asked if one of the objectives of LEAN is to increase productivity, Wright testified, "One of the objectives of the LEAN program in plating was to improve throughput." Wright finally testified that across the division in the wider context, LEAN can relate to improving productivity. Tucholski testified that LEAN principles are an elimination of waste in the process and that it "is an initiative that promotes continuous improvement in all processes every day." When asked if continuous improvement meant productivity, Tucholski testified, "It could very well apply to productivity in someone else's facility." Tucholski used Marble Ave. as an example. However, he admitted that LEAN principles also applied to the Plating plant.

[15] Niebauer testified LEAN principles require doing things in the least waste way. Yet, she incredibly claimed that LEAN principles did not involve productivity.

Minor credibly testified that: During the April 5 session, Jordan commented on the escalation in Respondent's medical costs under the old contract. Minor responded that national health care costs had been soaring since Clinton's national health bill had been defeated and the business community bore some responsibility for defeating the bill. Minor said he did not want the Respondent to "take it off the backs of the workers." Minor voiced opposition to Respondent's plan to propose increased medical cost sharing for the employees. Minor stated he had requested information on this, in reference to his March 15 letter, and it had not been provided.[16] Respondent's officials had no response concerning Minor's mention of an information request. While Respondent's witnesses denied that Minor made any information requests or referenced the March 15 letter prior to April 29, I have credited Minor's testimony on this point. Both Lemin and Niebauer's notes for April 5, corroborate Minor's testimony that there was a discussion about the cost of health care during that meeting. While neither set of notes confirm Minor's testimony that Minor made a request for information at the time, the notes were not verbatim, and Minor's testimony reveals that he did not go into detail about the request. Moreover, Lemin's notes for the April 30, meeting for the 9 p.m. session, reveal that Minor stated at that time, as reflected in the notes, "Asked for cost of insurance and not get." Lemin testified that he did not remember Minor making the remark during the April 30 meeting, but he knew there was a note about Minor complaining he had asked for the cost of health care insurance and not gotten it.

D. The April 15 bargaining session

During the April 12 session, the parties exchanged non-economic proposals. Minor credibly testified that, as of April 15, Minor had not received any response to the request for productivity information and Minor raised this with the Respondent. Minor credibly testified he told Respondent's committee on April 15, that Wright had promised the Union some productivity numbers and they still had not received them. Minor testified he also asked for the ISO 9000 records because he thought those could tie into productivity. Minor testified that he received very little response other than Jordan stating he would review it, and Tucholski stating he would have to check on the ISO 9000 to determine if they could release the form because it was not Respondent's criteria. [17]

Minor testified the ISO 9000 consists of reports relating to quality of paper work required with all manufacturing. Minor's credited and uncontradicted testimony is that he requested the ISO 9000 because he thought it related to movement of employees concerning inspection work, quality and inventory control and he thought it tied to requiring operators to perform duties in addition to their normal job functions. Minor testified Respondent told the Union something was required by ISO in an argument to expand job duties, and the Union asked to see what the requirement was. He testified the Union was saying if your reason is ISO compliance show us

[16] Minor's testimony reveals that he alluded to the letter, without specifically mentioning it. Busler also testified that Minor requested information during this meeting in that Minor said to Jordan that Minor was still waiting for a response for his information request.

[17] Busler credibly testified, that during the April 15, meeting, Minor said they had made the request for productivity, and he asked if anyone was working on that. Tucholski replied that they were looking at it. Similarly, Van Almen testified, that during one session prior to the May 6, strike, Van Almen passed Minor some notes stating that he wanted Minor to re-ask for productivity numbers and that Minor, in response, asked for "productivity numbers." Van Almen testified that he also asked Minor to request the ISO 9000 and that as a result Minor requested this information. Busler also testified Minor requested ISO 9000 documentation.

the document that says the ISO requires it. Minor testified he thought the request tied into productivity because the scope of job duties ties into productivity.

I have credited Minor's account of April 15, meeting, over that of Tucholski, Jordan, and Lemin. Minor had a more specific recall of what transpired at the meeting than Respondent's witnesses, and Van Almen and Busler confirmed much of his testimony, which was also confirmed by admissions of Respondent's witnesses and by Tucholski's notes of the meeting. Tucholski testified Minor brought the subject of productivity up again on April 15. Tucholski testified that Minor, "asked how I was doing relative to -- uh, creating standard hours, and I said I was still looking at it." I do not credit Tucholski's claim that Minor specifically asked Tucholski about the development of standard hours, rather then making a general request for productivity information as Minor testified. Tucholski's notes from the April 15 session state, "Russ slash Eric productivity need number". Thus, Tucholski's notes do not reference a remark by Minor relating to standard hours. Moreover, neither Jordan nor Lemin testified that Minor mentioned standard hours at the meeting.[18] There is also a reference to ISO 9000 standards in Tucholski's notes for the April 15 meeting, which Tucholski testified relates to international quality standards. Tucholski testified he did not recall who brought up ISO 9000, but stated it came up during the session. Tucholski testified that he made a notation in his notes should any information be needed, but he did not follow up on it.

E. The April 29 to May 1 bargaining sessions

Minor credibly testified that the Union had been asking for a copy of the medical plan for a couple of years prior to the expiration of the parties' 1999 collective bargaining agreement in that Minor had attended meetings where it had been discussed and requested. Similarly, Busler credibly testified that Union had been requesting a copy of the medical plan for the past three years; in order to know in advance what was covered before an employee sought a particular service. Lemin, in fact, admitted that the Union first made a request for a copy of the medical plan in late 2000. Lemin never claimed that Respondent provided the Union with a copy of the plan pursuant its request. Minor also credibly testified that there had been a problem with the pension plan, and the Union had a longstanding request for it. Minor testified he had been told in prior years by the vice president in human resources, that there was a change in the plan, which the Union had agreed to, but had not received an updated copy.

Minor credibly testified that as of April 29, when the parties started bargaining economics, he had not received a response to his March 15 letter requesting information.[19]

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[18] Lemin testified that Minor asked if Respondent was moving forward in getting productivity numbers for Plating. Tucholski said he still had not made up his mind. Jordan testified all Minor said to Tucholski was "how are you coming with those numbers?" Jordan testified Tucholski's response was, "I'm still thinking about it."

[19] I do not credit Minor's testimony that he verbally asked for the information contained in the March 15, letter, two or three times prior to the April 29 meeting. Minor's testimony about the circumstances concerning these requests, aside for the one made during the April 5 session, was vague and lacked specificity. Moreover, Minor admitted he never showed the letter to the company team, and asked them why he had not gotten a response. The testimony of the General Counsel's other witnesses concerning Minor's references to the March 15 letter, prior to April 29, was also vague as to date, time, and as to the circumstances when these alleged requests were made. In particular, General Counsel witnesses Valentine and Cantale overstated the case in terms of the number of times and nature of Minor's alleged references to the March 15, letter during negotiations when compared to Minor's testimony. Accordingly,

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Minor testified that by the April 29 session all non-economic proposals had been agreed to or dropped, except for the Union's demand for an office for senior steward Busler. Minor testified that, during the April 29 session, the party's initial economic proposals were exchanged around 11:00 a.m. Minor testified item 7(e) of the Union's initial economic proposal requests the elimination of employee premium contributions for medical benefits.[20] The Union also proposed a wage increase of $3 per hour in each of the three years of the contract. The Respondent's initial economic counter proposal included an increase the employees' health care costs to a 20 percent co pay. Minor testified he said the Union was vehemently opposed to the increased cost in health care for employees, and particularly percentage increases. Minor credibly testified that after a discussion about health care and the pension, Minor stated concerning the pension, he had requested information, a year ago from Mr. DiFalko, the former vice president in human resources, which he had followed up with an information request to Lemin last month.[21] Minor testified there was no response. I have credited this aspect of Minor's testimony. In this regard, Neibauer's notes for the April 29, session reveal that the parties did discuss the pension during that session.[22]

The 1999 agreement was set to expire at midnight April 30. Jordan credibly testified that the April 30, bargaining session began around 10 a.m. and that Minor said he thought they could do everything they needed to do to get a new contract by midnight. Minor said he did not want to repeat what happened in the past and stay until dawn.[23] The Union's third economic proposal was given around 10 a.m., and it contained an offer for a wage increase of $3.00, $2.50 and $2.50 per hour, respectively, for each year of the proposed agreement. Jordan informed the Union committee the wage proposal was beyond the stratosphere and Respondent could not even get close to getting an agreement there. Jordan said the Union had to get real if they were going to meet the midnight time frame. Jordan credibly testified Minor said the Plating plant needed to catch up to the Marble Ave. plant, or words to that effect. Minor said there was a $6 difference between Plating and Marble Ave. in average hourly earnings.[24]

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there is no credible evidence that Minor made a request for the information contained in his March 15 letter on April 15, and the allegation contained in complaint paragraph 6(A) solely as it relates to an alleged request on April 15, is dismissed.

[20] Minor testified that, under the 1999 agreement, employee contributions ranged from $5 to $13 a month, depending on whether they had coverage for dependents.

[21] Minor testified the last month reference related to Minor's March 15 letter to Lemin.

[22] I do not credit Busler's testimony that Minor also asked for hospitalization and medical coverage, the 401(k) contract, and the seniority list during the April 29, meeting. Minor failed to substantiate these assertions in his testimony, and Busler gave little specificity as to the conversation in which Minor made these alleged requests.

[23] Similarly, Lemin testified that when the bargaining session started Minor indicated that the contract expires at midnight, that there was no reason they should not get it done by midnight. he did not see any reason why he had to be there until 7 the next morning. Respondent witnesses Niebauer and Tucholski and General Counsel witnesses Busler and Van Almen also confirmed that Minor made this remark. When asked if he began the final negotiation session on April 30 by saying his deadline was midnight, Minor became evasive and testified, ""Probably. I don't recall that, yes.".

[24] Similarly, Lemin testified that Minor stated that the membership had indicated wages were the key that they were behind the Marble facility about $6, and wage catch up was the thing they were coming after. Jordan and Lemin testified Minor's reference was incorrect, and in actuality there was $8.00 an hour differential between the two facilities, although they did not correct Minor's assertion at the time it was made. Tucholski testified Minor stated that the plating employees, were interested in a wage catch up to the Marble plant wages, and that

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Jordan replied they had to compare apples to apples, and that they were a plating facility and should be compared to other plating facilities. Jordan testified Respondent's data indicated they were not behind other Cleveland area plating facilities. Jordan testified he stated the skills for the Marble plant machinists far exceed the skills required for platers at the Plating plant.[25]

Niebauer's notes for the meeting reflect that Jordan said, "We're hopeful that you will soon come back to the stratosphere. Three dollar, two dollar increases not in the cards. We want to be reasonable. Looking at Cleveland Data we are fine, more than competitive. Our GWI proposal is not the best but we're close." Niebauer credibly testified that Minor responded that they were $6 an hour behind the Cleveland Marble plant, that general wage increases were the priority for the membership this time and they were looking to catch up to the Marble Avenue facility. Niebauer's notes attribute the following remarks to Minor:

> Didn't put in a signing bonus: Membership made it clear what they were looking for, pretty skilled jobs @ Plating $6 behind Cleveland plant. 20 cent, 30 cent increase isn't going to do it. We want the $ in wages - that's why the signing bonus wasn't specified. Co gave out lump sums and that's how the wages got behind. Priority is GWI.[26] Incentive to sign the contract is fine but we're looking @ GWI to catch up.

Niebauer's notes reflect that Jordan responded:

> Catch up refers to behind. We're not comparing machinists to platers. Can't go down the street and get more money for plating, they're not behind. I can't hire them to run a machine at Cleveland."

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wages were a priority.

[25] I have credited Jordan's testimony, as confirmed by Respondent's witnesses and Niebauer's notes, over the Union witnesses version of this conversation. While Minor denied he used the term "catch up" for wages for the Plating plant to Marble Ave. plant, he and the other Union witnesses made certain admissions confirming Jordan's testimony that this was one of the Union's goals. Minor testified the employees at Plating were adamant about a wage increase and that the Plating employees felt left out. Minor went on to testify that, "I know that they wanted big wage increases at Plating because they felt they was treated differently at Marble, and they wanted to get closer to Marble." Minor also testified that one of the reasons Plating fell behind Marble Ave. was that in the past Plating accepted lump sum payments in lieu of general wage increases. Minor testified the Marble Ave. plant employees have machining skills that Plating employees do not have. Minor testified, "But the employees at Plating feel, you know, they plate to size, and very few plating operations plate to size." When asked if the skills at both plants were comparable, Minor testified, "Well, according to the company (they) were not." Minor testified the employees at Plating thought that some of the skill levels were comparable to the main plant. Minor admitted he felt there is a higher skill level at the Marble Ave. plant than the Plating plant, but testified some of the employees are performing interchangeable functions at both plants with the employees working at the Marble Ave. plant receiving much higher pay for similar work. Similarly, Cantale testified the Plating employees cared about the disparity in wages between the Plating and Marble Ave. plants, and that wages were an issue during negotiations. Busler also testified the Plating employees resented being so far behind Marble in wages. Yet, Busler incredibly denied he was determined to narrow the wage gap between Plating and Marble Ave. during bargaining.

[26] GWI refers to general wage increase.

The Union's fifth economic proposal was delivered around 7 p.m. on April 30. It is stated in paragraphs 7(e) and (g) the Union is willing to retain the employee medical contribution rates in the expiring contract if the Respondent withdraws its proposal to increase medical and dental contributions. Subparagraph 7(f) under insurance states, "Maintain exact coverage, including drugs."[27] Jordan credibly testified that, during the April 30 meeting, Minor made a request for the formulary drug list, which is a list kept by the insurance company setting forth covered drugs. Jordan testified the list is a dynamic list in that it changes over time as new drugs are added to the market place. Jordan testified Minor made the request citing a grievance Busler had filed during the term of the 1999 contract because the insurance would not cover viagra.[28] Jordan credibly testified Minor also asked for copies of the master medical plans on the evening of April 30, citing an incident where Van Almen had gone to the hospital for a skin ailment, and was denied coverage. Minor stated he wanted the medical plans and the drug list to prevent similar incidents from occurring in the future. Jordan testified Minor made the request for the medical plans and the formulary drug list around 7 or 8 p.m., which was after normal business hours.[29] Concerning the formulary drug list, Jordan testified that he was sure Respondent's committee said we will get it for you.

Niebauer testified that although the Union requested a formulary drug list on April 30, it was not provided by the May 15, bargaining session and she did not know if it was even provided at the time of the unfair labor practice trial in June 2003. She testified she was also not aware of the master health care plans being given to the Union any time prior to May 15, and that neither of these items were given to the Union prior to the May 6, strike. She testified that she thought these documents were in the possession of the Landing Gear Division's corporate office. Niebauer testified if corporate had a document, and had no problem in providing it, it could be provided to the Cleveland facility the next day. Niebauer testified she did not know why it took Respondent about 3 weeks to eventually provide Minor the master healthcare document after he requested it. However, she testified, "But I do know that Bill stated several times he had been requesting that information for a long time. He stated that as part of the grievance that was entered."

Minor testified, as confirmed by Busler, that the Union wanted a copy of the Aetna insurance plan because the Union had made a proposal that the benefits remain exactly the same since it was felt Respondent had changed the benefits over the life of the 1999 contract. Minor testified he wanted the plan to determine what the benefits were. He testified that Busler had been trying to get that plan for some time. Busler testified he asked Minor to convey to Respondent that for the past three years the Union had been requesting a copy of the medical plans to be able to know what was covered so employees would not try to receive a particular service for which there was no coverage. Busler testified that was why Minor asked for the Aetna and Kaiser plans.

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[27] Item 7(f) had been included in the Union's initial proposal on through all of its proposals up to the May 6, strike.

[28] Jordan testified that he was almost certain Respondent's staff in Human Resources had a copy of the formulary drug list.

[29] Lemin confirmed Minor asked for a copy of the list of drugs and the medical plans on April 30. Lemin testified that, as far as he was aware, the list was not provided to the Union before Lemin's leaving Respondent's employ on May 17. Yet, Lemin admitted there were no representations to Minor on April 30, or at any other time Lemin was aware, that a formulary drug list could not be produced. Niebauer's testimony and her notes also confirm that, around 7 p.m. on April 30, Minor requested a copy of the formulary drug list and the master medical plans citing Busler and Van Almen's coverage disputes.

The April 30 bargaining session went through the night to early morning hours of May 1. Minor testified that, during this meeting, he had discussions with Jordan across the table, and they also had off the record discussions. Minor credibly testified that: During a conversation he had with Jordan, Jordan stated going back to the 1999 contract on health care concerning employee contribution rates would have a huge cost and effect the outcome on the total package. Jordan said they would have to eat the cost of the premium increases in the future, which would cut into any wage increase.[30] Minor credibly testified that he told the company during the April 30 to May 1 sessions, concerning the health care package that "we still haven't been provided the information we needed on the plan for hospitalization." Minor testified he received no response from the Respondent when he made this remark. In this regard, Lemin's bargaining notes for April 30 at 9 p.m., quote Minor as stating, "Asked for cost of insurance and not get." Lemin testified he did not remember Minor making the remark, but he knew there was a reference in his notes about Minor complaining he had asked for the cost of health care insurance and not received it.

Lemin credibly testified to the following: The Union's seven economic proposal was given on May 1 at around 1:30 a.m. and Respondent's seventh economic proposal was tendered in response. At that time, Respondent agreed to the Union's outstanding proposal to return to employee medical and dental insurance contribution levels as they were in the 1999 contract. Until that time, Respondent had been proposing increased contribution levels for employees. Jordan also proposed to the Union that they engage in problem solving to hold down escalating medical costs. The Union committee was enthusiastic towards Jordan's approach, and Cantale wanted to start right away suggesting they replace Aetna with Blue Cross Blue Shield. Jordan testified he responded to Cantale's suggestion by stating that problem solving should occur after the contract was in place.

Lemin testified the Union's eighth economic proposal was given to Respondent on May 1, around 4 a.m. Lemin testified he did not see anything in the proposal regarding co-pay therefore he concluded medical cost sharing was resolved. Similarly, Jordan testified in the Union's eighth economic proposal, they were no longer continuing to propose the deletion of employee medical contributions. The Union's eighth proposal Section 7(f) states maintain exact coverage including drugs. Jordan testified he interpreted this to mean stay with the 1999 contract. Jordan testified Respondent was not trying to change the existing medical plan in its proposal. Jordan testified to his understanding there was an agreement on medical coverage at the time, and there was no dispute on medical cost sharing. At that time, the Union was also proposing a wage increase of a dollar an hour for each of the 3 contract years. [31]

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[30] I do not credit Jordan's denial of having told Minor that Respondent dropping its proposal for increased medical cost sharing would impact on other features of the economic package, and in particular on the wage increase. Jordan testified Respondent had looked at its proposed wage increase, determined it was fair, and was unwilling to expand it because of its possible impact on upcoming contract negotiations at its Marble Ave. and Troy plants. However, during a meeting on May 28, Respondent did increase its wage offer beyond its final offer given on May 1, while at the same time returning to its position that employees' insurance co-pays should increase. Moreover, Wright admittedly informed Van Almen on May 2, when attempting to persuade him to recommend Respondent's outstanding May 1, offer that the pie was only so big. Wright's remarks to Van Almen serve to corroborate Minor's testimony that Respondent was weighing the total costs of its offer, and that returning to the 1999 co pay levels, impacted on Respondent's wage offer and over all economic package.

[31] For the first year, using $14.29 as the weighted average this in an increase of 6.99

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Minor testified that, concerning the Union's eighth and last economic proposal, prior to the strike, since Respondent agreed to the Union's offer go back to the 1999 contract level for employee medical contributions, the Union no longer proposed to delete all employee medical contributions. Minor testified that the Union's goal during the course of bargaining was to avoid any increase in medical cost sharing and the Union prevailed in that goal. Minor testified the medical issue was off the table as it related to cost sharing, but not as it related to the entire package because Jordan had tied the size of the wage increase and other benefits which were still in dispute to the amount the employees paid for their health insurance.

Jordan credibly testified to the following: After the Union made its eighth economic proposal and before the Company made its final offer, Jordan had a side bar conference with Minor. Jordan told Minor that Jordan's outside limit on wages was a four percent increase the first year and three percent for each of the two subsequent years. Minor said he was having difficulty getting his committee to accept the three percent increases. Minor said if Jordan could get it to four percent for each year, Minor would take it back to the membership.[32] Jordan testified he called Dick Strehle, vice president of manufacturing, and Strehle called Wright. Jordan testified he got authority for the four percent with the understanding Minor needed it in order to get the contract where it needed to be.[33] Jordan testified Respondent's final wage offer was a four percent increase per year, which was the equivalent of $.57, $.59, and $.62 for each year of the contract as applied to the weighted average wage in the bargaining unit.

Jordan delivered the four percent per year wage increase offer to the Union, which took a caucus. Lemin testified that, following the caucus; Minor stated the Union committee was not happy with the economics or the wage increase. Jordan testified that Minor stated the Union committee had looked at Respondent's final offer and felt the wage offer was too small and they would take it back to the membership but they would not sign a tentative agreement and they would not recommend ratification.[34] After Minor's announcement there was another caucus,

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percent, with the three year wage increase being over 20 percent.

[32] Minor initially testified he did not recall discussing the possibility of four percent increase with Jordan for all three years during this conversation, but he later testified, on cross-examination, that, "I suggested -- Jordan had, I believe 4-3-3. I said, if you can go to 4-4-4, I will take it back to the membership for a vote." I do not credit Minor's claim that, at that time, he told Jordan that Minor was not going to recommend the four percent for each contract year to the membership. Cantale testified Minor told Cantale that, during a sidebar conference, Minor and Jordan discussed the possibility of a four percent per year wage increase. Cantale testified he thought Respondent's final offer was a four percent per year wage increase and that it was a pretty good offer. Cantale at first denied that the Plating employee members of the Union committee were unhappy with the wage offer. He then testified that "I guess he was not happy" in reference to Busler. Cantale testified that Busler wanted the Union's requested dollar per hour increase, and he was not happy with four percent.

[33] I do not credit Jordan's testimony that Strehle and Wright almost lost their jobs because they went beyond the scope of what had been established by their bosses when Respondent went to four percent in wages for the second and third year. In this regard, Wright testified there was no threat to Wright's job for approving Respondent's offer of four percent wages increases for each of the three contract years.

[34] Minor testified that, during the caucus, the Union committee's reaction to Respondent's wage offer was negative. He testified that, following the caucus, Minor informed Respondent's bargaining team that the Union committee would present Respondent's final offer to the membership, but would neither sign a tentative agreement, nor recommend the offer. Minor

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during which Jordan had a side bar with Minor and Busler. Busler was wearing a shirt that said, "In It For The Money," and on the back it said, "Right John." Jordan credibly testified that: During the side bar, Jordan said to Minor that Jordan was very disappointed they could not reach an agreement. Minor said the committee feels they have got to have more money in that the catch up to the Marble facility was a major thing on their mind. Busler said Respondent needed to give more money and could give more money. Busler referenced Respondent President Dave Burner stating Burner had received a two million dollar increase. Busler also said he had to have an office. Busler testified that during the caucus, Busler told Jordan that the four percent wage increase was not enough.

Jordan credibly testified that: Following the side bar with Minor and Busler, the parties reconvened at around 6 a.m. At that time, Jordan told the union they were taking a short view. Jordan asked if there was anything Respondent could do to prepare the Union for their ratification meeting. Minor responded he did not think there was anything other than producing copies of the final offer.[35] The parties parted around 6:30 a.m. on May 1.

The parties reconvened at 4 p.m. on Wednesday May 1. Strehle and Wright were there in addition to Respondent's bargaining team. They delivered a letter from Brian Gora, the president of landing gear division, which Wright read and then gave a copy to Minor. The letter states, in pertinent part, "Attached is the Company's last, best and final offer for a new collective bargaining agreement. It is open for acceptance until midnight, Sunday, May 5. If this offer is not ratified by the Sunday deadline: (a) the offer lapses; (b) any future offer will be less generous, including increased medical cost sharing; and (c) the Company will take whatever measure it deems prudent to protect our customers, including the off-loading of Plating facility work until the risk of a work stoppage has been alleviated." Jordan credibly testified that: Minor responded that Gora could not do that, and that he thought they were coming back at 4 p.m. to negotiate further. Minor threw his pencil down and looked perturbed. Jordan responded they were not there to negotiate. Minor said Gora's statement that they would remove the offer if it was not ratified was not legal. Minor said he could have struck Respondent at the end of the earlier bargaining session when they did not have a tentative agreement, but he did not because he hoped they were going to come back and work out an agreement. Minor said he wanted the members to vote on the agreement. During the meeting, Busler said Respondent knew they wanted more money, and he talked about Respondent's ability to give more money

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testified he told Jordan that the Union would not recommend the final offer because the Union committee was looking for more benefits in the pension area, more raises, and that "They was after more stuff." Minor testified he did not remember exactly what he told Jordan because the Union still had several items on the table. I have concluded that based on Lemin and Jordan's credited testimony, and admissions by Minor, that he told Respondent that the Union committee was not recommending the offer primarily due to their dissatisfaction with the wage offer.

[35] Similarly, Lemin testified Jordan asked the Union if they needed any information to present to the membership. Minor said he did not need anything else, he would bring the proposal to the membership for a vote. Niebauer and Tucholski confirmed Lemin and Jordan's testimony as to Jordan's query and Minor's response. Niebauer's notes read that Jordan asked, "Is there anything you need for your meeting?" General Counsel witnesses Busler and Cantale admitted that Jordan asked whether there was anything he could provide the Union for their membership meeting and Minor said there was nothing he could provide that they had Respondent's offer and Minor was just going to present the offer. Minor testified he was unsure whether Jordan posed this question to Minor stating, "He might have. He might not. I don't know." Minor explained that it was customary for Respondent to prepare the final offer for the Union to present to its membership.

including Burner's receiving substantial increases in his salary. Jordan credibly testified that, at no time during the meeting, did Minor state he was having trouble evaluating Respondent's final offer or that he had requested and been denied information.[36] Busler admitted that, during this meeting, Busler characterized Respondent's final offer as an insult and that Busler stated if Respondent could pay its president two million dollars, they ought to pay the employees more than they offered. Minor credibly testified that by the end of the session on May 1, the Union had not received any of its requested information.

F. The May 2 conversation between Van Almen and Wright

Van Almen credibly testified that Wright came over to where he was working on May 2. Wright said the company felt they offered the Union a good contract. Van Almen said he was not there to negotiate. Wright said he believed health care was an issue they had taken off the table. Van Almen said you did not give us the health care information and the employer costs we had asked for. Wright said well the pie is only so big and that because health care was an issue they had taken off the table, there was nothing left for anything else that the union wanted. Wright acknowledged speaking with Van Almen on Thursday, May 2. Wright testified he told Van Almen the pie was only so big, and he had gotten every last nickel out of it. Wright did not deny that Van Almen mentioned Respondent's failure to provide the Union with requested health care information. Van Almen testified with specificity and in a credible manner concerning this conversation, which Wright admitted in part. Noting the lack of a specific denial by Wright, I have credited Van Almen's account of the conversation, including his statement that

[36] Niebauer, Lemin, and Tucholski confirmed Jordan's description of the afternoon meeting on May 1. Niebauer testified that during the afternoon meeting on May 1, after Gora's letter was presented to the Union, Minor threw his pen down on the table and said he thought Respondent would come back for further bargaining. Minor said he could have struck Respondent that morning but felt it was important to let the membership vote on the Respondent's final offer. Niebauer's notes for the session read that Minor stated, "I've waited three hours here under the disguise that the Company wanted to work out a settlement." In parenthesis it says, "He's very angry, throws pen, paper down". The notes reflect that Minor also stated, "I didn't strike them this morning. I felt it was important to let the members vote." Niebauer testified Minor also said Respondent could not take the offer off the table after the Union committee had agreed to take it back to the membership. There is a statement in her notes attributed to Minor reading, "Can't take it off the table after, after we said it, it will take it to members." Niebauer testified Busler said Respondent's final offer was an insult especially after the Respondent's CEO Dave Burner had reportedly received a two million dollar raise. Niebauer's notes reveal that Busler stated, "Did it, referring to the proposal, go to Mr. Burner for approval. He got a two million dollar raise." Niebauer's notes reflect that Busler said, "we won that battle with Texas. We're just trying to be World Class under Russ. With the work that's coming our impression is this contract is an insult and I've never said that before." Niebauer's notes also state that Busler said, "He could not get a friggin' desk to use for my Union business. It's not a win win situation. If I can't get a desk and a chair, then it's not a fair proposal". The notes state that Jordan said, "Doug and Dick did not come here to negotiate." Minor responded, "This is painfully obvious". Niebauer, Lemin, and Tucholski testified that at no time during the afternoon session did Minor state he wanted more information. In the face of the denials by Respondent's witnesses, I do not credit Minor's claim that he stated, during 4 p.m. meeting on May 1, that Respondent had still not provided the health care information Minor requested. None of the General Counsel's witnesses corroborated Minor's claim that he raised the Union's request for health care information during this meeting. In fact, Cantale testified that Minor did not say at the meeting he needed more time or more information before he could take Respondent's offer to a vote.

he informed Wright that Respondent had failed to provide the Union with requested health care information and costs.[37]

G. The May 5 contract ratification meeting

The Union's contract ratification meeting with bargaining unit members was held on Sunday, May 5 at a hall in Cleveland, Ohio. Minor testified the meeting lasted around 2 hours. Van Almen credibly testified that, during the meeting, Minor, as well as himself, were trying to calm employees down. Van Almen explained that, "the company presented the contract to them first, before we ever did. So they were pretty upset when they even got there."[38]

Minor credibly testified as follows:[39] Minor opened the meeting and explained Respondent had presented their last and best offer. Minor read Gora's letter. Minor said the committee was not recommending the contract, but they had agreed to take it to a vote. Minor reviewed the non-economics first, and there was very limited discussion. Then he reviewed the economic proposal and discussed it with the employees. Minor then explained he had made various information requests that had not been provided, and that if the contract was voted down, Minor felt it should be an unfair labor practice strike because Respondent had denied his information requests. Minor testified the vote was 53 to 5 against the contract offer. Minor testified that, after the vote was taken, he stated Respondent was not providing information to him, and he was going to file charges with the NLRB. Minor testified he told the employees if there was a strike there was an advantage if they could get the strike ruled an unfair labor practice strike in that they could not be replaced. Minor asked the employees not to go on strike when they rejected the contract and they did not vote to strike at that time. He advised them to keep working while Minor went to Federal Mediation to schedule another bargaining session. Minor testified that, during the meeting, he told the employees he had requested health care plans, productivity records concerning the Plating plant, and pension plan, and those records were not provided.

Busler confirmed Minor's testimony about the meeting. He credibly testified that: Minor read the changes in the contract. Minor then said Respondent had not given the Union all of the information they requested and it was hard to answer the people's questions on some issues as a result. Minor said the bargaining committee considered it to be an unfair labor practice for the company not to supply the information and that if employees voted to go on strike, Minor felt it would be an unfair labor practice strike. Minor mentioned that the hospitalization and medical coverage had been requested and not received because there were questions about that from employees.[40] At some point in the meeting a vote was taken to reject the employers last offer.

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[37] There is no complaint allegation that the Union renewed its information request on May 2. Nevertheless, I have concluded that the contents of this conversation were closely related to the underlying complaint allegation, and that the conversation itself was fully litigated.

[38] Similarly, Pestello testified there were also shouts and obscenity by the employees and that they were mainly upset about Respondent's offer. Pestello testified the employees said they were unhappy with the pension, the general wage increase, and one of the biggest things was the cost of health care. Cantale testified employees were upset because wages were low, the hospitalization would be going up, and as to money in the pension and 401(k).

[39] I have credited Minor's testimony as to what transpired at the contract ratification meeting. Minor was the principle speaker at the meeting and had a fairly specific recall of the event. While the meeting was somewhat boisterous, the General Counsel's other witnesses, as set forth below, confirmed Minor's account of what transpired there.

[40] Van Almen testified Minor mentioned health care and productivity numbers as requested

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Busler testified that, after the vote was taken, Minor said he was going to the Labor Board to file charges against Respondent. Minor said if the charge was found to be in the Union's favor, he felt it would be an unfair labor practice strike. Busler testified it was stated at the meeting that if it was an unfair labor practice strike employees could not be permanently replaced. Minor asked the employees to hold off on strike because he wanted to give Respondent an opportunity to revise its proposals.

Pestello testified that: Minor read Respondent's proposal and stated it was their last and final proposal. Minor said the Union Committee did not recommend it, nor would they sign it, and there was shouting that we should go on strike. Minor said this is not the time to go on strike, but they were filing an unfair fair labor practice suit against the Company for information that they requested at negotiations and never received.[41] Similarly, Cantale testified Minor advised the membership not to go on strike and that he was trying to set up a meeting with Respondent through Federal Mediation. Cantale and Van Almen confirmed Minor said he was going to file some unfair labor practice charges against the company for not providing requested information. Cantale testified that, during the meeting, employees said they needed more information to know if they were going to have a good contract." He testified the employees wanted to know the cap on medical insurance.

Curtis McGuire participated in the May 6 strike and returned to work with the first group called back. McGuire credibly testified to the following about the May 5 meeting:[42] After discussing the contract, Minor said Respondent was not providing the Union with necessary information. Minor said he was going to file labor charges on Monday to see if he could get information from the company. McGuire testified that he went out on strike for a few reasons, included in which was Respondent was dragging its feet in providing requested information. McGuire also testified he did not like the retirement or the medical benefits the Respondent was offering. McGuire testified he wanted decent retirement and he was "looking to take care of my health." McGuire testified, "I didn't want to go into another year where I sign a three-year contract, and only had medical for two-and-a-half years of it. Because our medical had a change in between contracts without our knowledge. And I just -- me, myself, I like to see

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information.

[41] Pestello testified Minor informed the Local Union officials that the unfair labor practice charge was over Respondent's refusal to provide the Union with requested information. Pestello also testified Minor discussed the matter with a couple of employees, but he thought other employees had trouble hearing Minor explaining the reason for the unfair labor practice charge because of the shouting in the room. I have concluded more people heard the Minor's explanation of the unfair labor practice charges than Pestello recalled, as the General Counsel's witnesses, who attended the meeting, both Union officials and non officials uniformly testified in a credible fashion that Minor explained that the charges were over Respondent's refusal to provide requested information.

[42] I found McGuire, considering his demeanor and the content of his testimony, to be a particularly credible witness as to how Respondent's refusal to provide information impacted on his decision to strike. In this regard, McGuire, a long time employee, explained in detail including his medical history the reasons why he was more concerned about health care and retirement than he was about Respondent's wage offer, and how Respondent's refusal to provide requested information in these areas impacted on his decision to strike. Respondent argues in its brief that McGuire was a union steward towing the Union's position in his testimony. However, it was not established on the record that McGuire was a union steward, nor were it to be so it would not have impacted on my decision to credit his testimony in full since he testified in a detailed straight forward fashion and his testimony was worthy of belief.

something locked in so you're stable." McGuire testified Respondent did not provide medical information, retirement benefits, and that if there was information they were supposed to have, he felt the Union should have it so they could make a decent decision, and this played a role in McGuire's decision to strike.

Josip Mosnja was another striker who attended the May 5 ratification meeting. Mosnja testified Minor addressed the employees at the meeting. When he was asked what Minor said, Mosnja testified "He said he brought the contract forward that the company gave him, and that he hadn't received any information that he had requested on our behalf about medical and pension and other things on the bargaining table and he had not received what he had requested, I believe a month earlier, and that he had continually asked for them…". Mosnja testified Minor discussed with the employees that he was going to file an unfair labor practice charge. Mosnja testified he participated in the May 6 strike "because we weren't receiving the information that Bill had requested so we could negotiate a contract with us, and I felt that without the information that he was requesting, he couldn't do his job to the best of his ability because the company wasn't cooperating and being fair about negotiating with us from that nature." Similarly, Van Almen testified he joined the strike for the "same reason I didn't give them a tentative agreement at the negotiating table is because they weren't providing us with information."[43]

Minor credibly testified the pension plan, hospitalization plan, and the productivity records "were the major items still outstanding at that time that were still major subjects of negotiations, causing a package to be not recommended by the committee." Minor explained, during his testimony, the Union's need for productivity records by stating "Plating had felt, you know, that they were being tied in to the Cleveland operations, and they felt, you know, that their productivity records, they had exceeded what the Cleveland Plant was doing, and they felt that they should (not) be held back because of that." Minor testified the Union needed the cost of the pension plan because the Union was trying to get additional benefits, and Respondent proposed a lot lower offer than the Union was seeking. Minor testified, "there was another issue on the pension, you know, not only the costs but the makeup of the plan. We had agreed to something in prior negotiations, which we had discussions throughout negotiations, and that plan had not been provided yet either to show the changes in the plan." Minor testified that the Union wanted a copy of the medical plan, which included prescriptions, hospitalization, and dental. Minor testified the Union also wanted to know the cost of the plan, "because the company had proposed -- you know, originally, they had proposed, you know, big increases. They had got off of those increases but Mr. Jordan had stated that this was a huge cost to the company that definitely affected the overall economic package they presented. So cost of the plan was still in effect, even though they withdrew the actual proposal for employee co-pays."

[43] Respondent, in its brief, asserts that Van Almen was not a credible witness because he failed to acknowledge that during the May 5, meeting Minor asked the employees not to strike as Minor was going to try to set up a meeting with the federal mediator. Van Almen testified, "I don't believe he said that. If he did, I don't recall it." However, Van Almen also testified that Minor did not recommend that the employees strike during the meeting, and that he did not hear Minor discuss it one way or the other. Given the tumultuous nature of the meeting, I do not find that it impacts on Van Almen's credibility that he did not hear or recall every thing Minor said. Pestello testified there was a lot of shouting at the meeting, and Van Almen testified that both he and Minor were trying to calm employees down.

H. The May 6 strike and the Union's initial Unfair Labor Practice charge

Minor filed an unfair labor practice charge over Respondent's refusal to provide information on May 6. Minor credibly testified that: Minor spoke to Busler by phone on the morning on of May 6. Minor told Busler that Minor had been in touch with the federal mediator trying to get a meeting scheduled and that Minor had filed charges with the NLRB. Around 3 p.m., on May 6, Minor received a call from Cantale stating the employees were walking out at 3 p.m. at the end of the first shift. Minor called the International for approval of the strike following Minor's receipt of Cantale's call. The UAW requires that the International Union approve local union strikes. Minor testified the International Union approved the strike close in time to when it began as Minor called the International as employees were walking out.[44]

Busler credibly testified that: Busler worked the 7:00 a.m. to 3:00 p.m. day shift on May 6. Busler announced the strike on that date by word of mouth at around 2:55 p.m. Busler spoke to Minor and Cantale before the strike that day. Busler testified he spoke to Cantale around 9 a.m. and Minor before noon by phone. Busler testified he had basically the same conversation Cantale and Minor. Busler told them the employees in the shop were upset because they felt should not be working because it was helping Respondent, although Respondent was not negotiating in good faith. Busler testified he told Minor the people were not happy with the contract, they were not happy with Respondent's refusal to provide any information, and they did not feel that Respondent was negotiating in good faith.[45] When asked the reasons he went on strike Busler testified that he did not believe Respondent was going to fairly compensate employees for the next three years, that the wage increase was insufficient, and Respondent had not provided the Union the information to make an intelligent decision on whether the costs Respondent was trying to put on the employees including medical costs were justified. Busler testified in the days leading up to the strike he learned the opinions of co-workers by direct remarks to him by employees, and employees reporting complaints of other employees to him. Busler testified they were trying to give Respondent time to respond to the Union's request to meet the next day to try and work out a contract. However, Respondent was stonewalling and not getting back to them. Minor's advice to delay a strike was over ruled, "Because we told Bill Minor what the attitude of the people in the plant was, that their attitude was that we're helping the company out by putting the product out when they're not giving us the information that we requested, not giving us a fair contract offer in our -- in the people's opinions. And that they wanted to be out on the street instead of in the shop, which is what they told Bill Minor on Sunday, and 24 hours later, we were trying to get the issue resolved, and it still hadn't been resolved by the company."[46]

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[44] Minor testified that a strike vote took place among the employees prior to the start of negotiations and there was no separate meeting to vote on the strike once the employees rejected the contract.

[45] While Minor did not report this aspect of Busler's conversation, I have credited Busler's testimony here. As the credited evidence established that the employees were loud and angry over Respondent's contract proposal on May 5, and during that meeting Minor had informed them that Respondent had not provided requested information and that he was going to file an unfair labor practice charge.

[46] I did not find Cantale's version of his phone call with Busler to be credible. Cantale testified that Busler called Cantale on May 6 in the afternoon before 3 p.m. and Busler said he still had not received any of the requested information, and they were having problems in the shop as employees were asking to go on strike. Cantale testified Busler said he expected to receive information because Busler and Tucholski had talked, and Busler told Tucholski if we do not get any information by 3 p.m. we are going on strike. However, Tucholski credibly testified

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The parties stipulated that the strike began at the Plating facility on May 6, and that the Union filed the initial charge in this matter on that date, which Respondent received on May 10. On May 13, Respondent faxed a copy of the charge to its counsel David Hiller, who contacted the Board's regional office on that date. As a result, the Region faxed Hiller a copy of Minor's March 15 letter to Lemin requesting information. The credited evidence reveals that the picket signs displayed during the strike read "UAW Local 2333 on strike General Plating." One of the signs contained the additional remark, "You just can't fix stupid."[47]

I. The May 15 bargaining session

1. The General Counsel's witnesses

The first bargaining session after the start of the strike was held on May 15, at the federal mediator's office. Minor attended with the entire Union committee. Minor credibly testified to the following: Minor told Jordan that Respondent's final offer had been rejected 53 to 5. Minor testified that he explained to Jordan "wages, 401k, and there's a couple of non-economic items, and pension were major issues with the employees."[48] During the meeting, Jordan told Minor that Jordan wanted to talk about the unfair labor practice charge. Jordan asked what information Minor had not received. Minor said they did not get any of it. Jordan said Lemin provided some of it to Cantale. Cantale said the only thing he received was the seniority list. Minor told Jordan, "it was much more than that I had requested." Jordan replied, "I know, someone on our team misplaced that letter." Minor offered Jordan a copy of the March 15 letter, but Jordan said, "we have the letter now, and we got it from our attorney." Jordan briefly went through the items in the letter, and Minor told them the only thing they provided was the seniority list. Then the mediator called for a caucus, during which, the mediator came back into the room and said he wanted to know what Minor had not received from the letter. Minor said he already told Jordan he had not received any of it. Minor thought the mediator said he was told Cantale had received part of it. Minor asked Cantale who said he received the seniority list, including the date of birth and nothing else.[49] Minor told the mediator he was not

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he was not at the Plating facility on May 6, and he denied having a conversation with Busler on that date. I do not credit Cantale's testimony concerning Busler's alleged conversation with Tucholski, over Tucholski's denial. In addition to considerations of demeanor, I note Cantale's testimony about the conversation was hearsay, and that Busler failed to corroborate it.

[47] Minor testified that normally UAW picket signs say, "UAW on strike," however, he has seen some signs with writing on them in other strikes that also state unfair labor practice strike.

[48] Jordan, Lemin, and Niebauer confirmed that Minor stated that wages, the pension, 401(k), and COLA stood as impediments to an agreement.

[49] While I find that the discussion occurred as Minor relayed it, I have concluded that he was mistaken about his conclusion that Respondent had provided the Union with a current seniority list in response to the March 15 letter. In this regard, Valentine testified he had an old list, which he probably received from Busler, not a current list, which was what the Union requested. Valentine testified he thought Busler received the list from Respondent as part of the terms of the 1999 agreement, wherein Respondent had an obligation to furnish the Union with an updated seniority list. Moreover, Cantale testified, concerning Minor's March 15, letter, that no information was provided to the Union before the May 6, strike began. Cantale testified he did not recall if he provided Minor with a seniority list prior to the start of negotiations. I have concluded based on the testimony of Valentine and Cantale that the seniority list Minor was referencing in his testimony and at the meeting was an old list provided under the terms of the 1999 agreement, and not pursuant to Minor's March 15 letter.

there to bargain over an unfair labor practice strike. Minor said he would let the National Labor Relations Board handle that. The mediator left the room and returned a few minutes later and asked if Minor sent the March 15 letter by certified mail. Minor said he had not. The mediator left then returned and said Respondent claims they did not receive your letter.

Busler credibly testified that: There was a discussion of the March 15, letter, during the May 15, meeting, relating to Minor's filing the unfair labor practice charge. Minor said they were not there to discuss the Labor Board charge; they were there to negotiate a contract. Minor also said he had not received any information requested in his March 15 letter. Minor asked Jordan if he needed a copy of the March 15 letter, and Jordan replied he had already received it from the Labor Board. Respondent's committee talked among themselves, and then Jordan said that one of the committee members on his team had misplaced the letter. At that point, Lemin blushed and hung his head. Busler testified Respondent took a caucus. Then the mediator came back in the room and asked if Minor had sent the letter by certified mail. Minor said no. The mediator then said Respondent was saying they had not received the letter at all.

Van Almen credibly testified that, during the meeting: Jordan wanted to know about the unfair labor practice charges against the company. Minor responded they were not there to discuss that, but were there to get a contract. Minor said they had sent Respondent a letter requesting information, and they still had not received anything. Van Almen testified that, in response to Minor's remark, there was some whispering at the other side of the table between Jordan, Lemin, and a woman on Respondent's committee, and "then John Jordan made a statement that one of his team misplaced the letter." Similarly, General Counsel witnesses Cantale, Valentine, Morrow, and Pestello all testified that, during the May 15 meeting, Jordan stated someone from Respondent's team had replaced Minor's March 15 letter. Valentine and Morrow testified to the effect that, when Jordan made the remark, Lemin looked embarrassed.

2. Respondent's witnesses

Jordan testified that, during the May 15 session, he asked Minor what he wanted concerning the March 15 letter, and Minor said they were not there to negotiate the Board charge. Jordan testified, "I went on to say to him; Bill, let me just say that I don't understand what's going on. I stated, I said, if you had mailed the letter, and let me suppose further, if your secretary was supposed to have done this, and if, as you suppose it was mislaid, what bothers me, Bill, about the whole process of my hypothetical is why would you not say something between the time that I was here, at the beginning on April 5 to now." Jordan testified Minor responded that he was not there to negotiate the letter and the charge, they were there to try and get a contract, and that was the only thing he was going to talk about. Jordan denied making any statement that the letter had been received and misplaced.[50] Jordan testified Minor did not offer to give Jordan a copy of the March 15 letter. Jordan initially testified Minor did not tell Respondent what information the Union still needed. Jordan later testified that, "I recall, very vividly, that he did not want to talk about. I asked him specifically what is it that you don't have and Bill said, look, I'm not going to discuss that because I'm here to negotiate not answer an NLRB charge. That's precisely what Bill said." Jordan then denied that Minor said that he did not receive any information requested in the letter.

[50] Jordan testified that no one from Respondent told him that they had seen the March 15 letter before Hiller obtained it from Region 8 on May 13, or that the letter had been received and misplaced.

Lemin testified that, during the May 15 meeting, Jordan asked Minor if he wanted to go through the March 15 letter and see what information was lacking. Lemin testified Minor refused and Minor said, "he was there to negotiate a contract and not there to negotiate an unfair labor practice." Lemin denied that Jordan said a member of Respondent's team misplaced the letter. Lemin testified that Jordan "made an assumption of format where assume that you had sent the letter on March 15th or your secretary had sent it on March 15th. Assume that it got to Goodrich and assume that it did not get to Tom Lemin. Why would you just be bringing it up for the first time now, versus having brought it up throughout the whole entire bargaining session." Lemin testified that he thought Jordan did use the word misplaced in his statement stating, "I think he said assume it was misplaced at Goodrich." Lemin claimed he did not remember Minor, during the May 15 session, stating he had asked for information several times and not received it. He testified Minor may have said it.

Niebauer testified that, during the May 15, meeting, Jordan asked Minor what information he still needed to receive from the March 15 letter. Minor responded he was not there to discuss an unfair labor charge; he was there to bargain a contract. However, at a later point in her testimony, Niebauer admitted Minor said that he had not received any of the information that was requested in Minor's March 15 letter. She testified Jordan said, "I don't understand. Suppose your secretary typed and mailed the letter. Suppose Goodrich received it. Suppose somebody at Goodrich misplaced it. Why didn't you say anything during this negotiations." She then claimed Minor did not respond to Jordan's question except to say he was not there to discuss the unfair labor practice charge. Niebauer denied that Jordan stated one of Respondent's team members misplaced Minor's letter. Niebauer's notes for the May 15 bargaining session contain the following:

> John: Details around your letter w/ unfair labor practice charges, which items have you gotten to date?".
> Bill: None
> John: What you mentioned was F (Health Care)
> Bill: Mentioned it numerous times.[51]
> Bill: You sent those costs to ees home -not to us circumvented the bargaining committee it's too late now after an unfair labor practice strike starts.

3. Credibility

I found, considering the demeanor of the witnesses, the General Counsel's witnesses to have testified in a consistent and credible fashion that Jordan brought up the March 15 letter during the meeting, and that Minor responded that he did not want to discuss it. Thereafter, Jordan asked Minor what information he had received that was set forth in the letter, and Minor

[51] Niebauer initially testified she understood Minor to be saying, as referenced in her notes, that he mentioned healthcare issues numerous times during negotiations, not a request for information pertaining to healthcare numerous times. She testified the "F (Health Care)" in her notes was a reference to Section 7(F) in the Union's proposal on health insurance. I found this explanation to be self-serving and contrary to the plain reading of the notes. Moreover, Niebauer later testified she did not know why it took Respondent about 3 weeks to provide Minor the master healthcare documents after he requested it. She then testified that, "But I do know that Bill stated several times he had been requesting that information for a long time. He stated that as part of the grievance that was entered." Niebauer testified if corporate headquarters had a document, and had no problem in providing it, it could be provided to the Cleveland facility the next day.

responded that he had not received any of it. During the conversation, Jordan said that one of the committee members on his team had misplaced the letter. At which point Lemin, to whom the letter was addressed, began blushing and hanging his head. Minor offered Jordan another copy of the letter, and Jordan replied that it was not necessary because Respondent's counsel had since provided him a copy. In addition to the consistent testimony of the General Counsel's witnesses on the matter, I note there is circumstantial evidence supporting their testimony. First, it was customary for Minor, as admitted by Jordan, to prepare a written information request prior to the start of negotiations, and Keck credibly testified that she typed the letter, and deposited it for mailing in accord with the Union's office procedures. While the letter was sent by regular mail, there was no claim that Respondent, prior to this instance or thereafter, ever had a problem receiving mail from the Union.

I did not find Jordan's testimony that Minor refused Jordan's request to talk about the letter and thereafter Jordan presented Minor with a hypothetical which included the supposition that one of Respondent's officials mislaid the letter to be very convincing. First, given Jordan's claim that Minor refused to discuss the letter, there was no basis for Jordan to hypothesize that Minor's secretary had typed and mailed the letter, which Respondent's witnesses testified was part of Jordan's hypothetical. Rather, it appears that Jordan's hypothetical was created as part of Respondent's trial defense after Respondent had the luxury of hearing Minor and Keck's testimony that secretary Keck typed and then deposited the letter for mailing for Minor. Thus, I do not credit Jordan, Lemin, or Niebauer's claim that Jordan presented such a hypothetical to the Union during the meeting. Moreover, considering his demeanor, I found Jordan to be an individual who spoke in a direct fashion, and that it was unlikely that he would have danced around the issue at the meeting by presenting a hypothetical, as opposed to directly asking Minor why he did not display the letter. Jordan also denied Minor told Jordan that he had not received any of the requested information during the meeting. Niebauer's admission and Niebauer's notes undercut Jordan's testimony on this point. Niebauer testified and her notes reveal that when Jordan asked what information Minor had received that was requested in the letter, Minor replied none of it. Thereafter, Jordan acknowledged, as set forth in the notes, that Minor had requested health care information, and Minor replied that he had done so numerous times. In this regard, Niebauer later testified that Minor stated several times during negotiations that the Union had been requesting the master health care plans for a long time. Thus, I have concluded that, during the May 15, meeting, Jordan told the Union committee that one of Respondent's committee members had misplaced the March 15, letter, at which point Lemin, the addressee on the letter, showed signs of embarrassment. I find that Jordan's statement to the Union committee constituted an admission that the letter had been received and misplaced.[52]

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[52] In *Associated Machines, Inc.,* 114 NLRB 390, 396 (1955) enfd. 239 F.2d 858 (6th Cir. 1956), it was stated that, "The generally accepted rule in most United States jurisdictions is that proof of the existence of an office practice or custom in the mailing of letters, together with proof that the custom was followed in the particular instance, constitutes sufficient evidence of mailing to support a presumption of due receipt by the addressee. This presumption is strengthened where, as in this case, it is shown that the letter was not returned to the sender, although the envelope bore a return address, and also that other letters mailed by the sender at the same time as the letter in issue were received by their respective addressees. Furthermore, the addressee's positive denial of receipt does not nullify the presumption but merely creates an issue of fact with such weight to be given the presumption as the trier of facts thinks it entitled to, the burden of proving receipt remaining throughout on the party who asserts it." In that case, a presumption of receipt of a representation petition was found where regional office supervisor of "affidavit compliance" testified to a routine office procedure where she addressed envelopes

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with a return address, inserted a petition in the envelope and deposited the envelope on a desk which was used for outgoing mail, and either she or a subordinate in the normal course of business removed the mail from the desk that same evening and placed it in a U.S. mail box. A file in the office was maintained for returned mail, and the file did not contain the disputed letter as being returned. It was also concluded there that the testimony of the respondent's witnesses denying receipt of the letter was not worthy of belief. In *L.A. Baker Electric,* 265 NLRB 1579, 1588 (1983), it was stated that when a litigant seeks "to raise a presumption with regard to a letter's receipt by presenting evidence descriptive of *routine office procedures* followed with respect to mailings, most jurisdictions consider such evidence insufficient to raise a presumption regarding the letter's receipt, unless the proffered witness claims actual personal knowledge that the routine was, in fact followed completely. (Citations omitted.) Monsoons' conclusionary testimony, that she 'always' follows the same procedure, can hardly be considered sufficiently detailed or precise to raise a presumption with respect to the designated letter's receipt."

Citing the *L.A. Baker* decision, counsel for the General Counsel states at page two of his brief that, "Minor did not personally mail the letter so General Counsel cannot rely on any presumption of receipt by the Respondent." Similarly, Respondent cites *U.S. v. Wolfson,* 322 F. Supp. 798, 813-14 (D. Del. 1971), affd. 454 F.2d 60 (3rd Cir. 1972), cert. denied 406 U.S. 924 (1972), for the proposition that where an officer of the company who had a letter placed in an outgoing mail basket would not have personal knowledge that the mail clerk actually deposited the letter in the U.S. mail, there must be testimony of the mail clerk that the letter was deposited in the U.S. mail in order to create a presumption of receipt. However, the court in *Wolfson* noted the authorities were divided and that some courts have held that mailing may be presumed without the testimony of the clerk. Regardless of which standard is applied, the court in *Wolfson* stated that even assuming the requirements necessary to raise the presumption of receipt are not met, the actual receipt of a letter can be established by circumstantial evidence. Id. at 813-14.

In the instant case, Keck credibly testified to a standard practice for the mailing of letters, and identified the March 15 letter as one she typed because her initials appeared on the letter. She credibly testified that it was typed on March 15 for mailing, and that on that date, based on her practice; Keck deposited the letter in the Union's outgoing office mailbox. Keck also produced her file copy of the letter and she testified that she was unaware of the mail being returned to the Union's office. While Keck was unable to identify who in the Union's office removed the letter from the outgoing box and deposited it in the U.S. mail, it was concluded that such testimony was not necessary to establish a presumption of receipt in *Associated Machines, Inc.,* supra. I have concluded that Keck's testimony concerning the circumstances of this letter was specific and suggests a strong likelihood that the letter was in fact mailed on the date Minor signed it. I do not find it necessary to determine whether Keck's testimony is sufficient under Board law to establish a presumption of receipt on the part of the Respondent. Rather, I conclude her testimony, along with Jordan's informing the Union committee on May 15, that a member of Respondent's committee had misplaced the letter, establishes that Respondent had in fact received it, and I have discredited the testimony of Respondent's witnesses to the contrary. In doing so, I have considered but rejected the testimony of certain of Respondent's witnesses that there was a search for the letter after the filing of the Union's unfair labor practice charge. I did not find the testimony of this purported search to be worthy of belief. Some of the testimony was based on a hearsay statement from an individual who no longer worked at the Cleveland plants' human resources department, was out of state at the time of the trial, and not called as witnesses. However, the hearsay account of this absent individual's statement was relayed through the testimony of Lemin. Since I have concluded Lemin's denial of receipt of the letter March 15 letter prior to May 13 was unreliable, I have discredited his claims that other individuals made similar statements as to the letters receipt.

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J. Lemin's May 17 letter and Minor's May 23 response

By letter dated and hand delivered on May 17, Lemin wrote to Minor and attached information in response to Minor's March 15 letter. Lemin stated in the letter that May 17, was his last day at Respondent, but Pat Borah was prepared to meet with Minor on Monday, or as soon as Minor's schedule permits if the enclosed information needs to be supplemented prior to the parties' next bargaining session. Lemin stated in his May 17, letter that the following information was attached:

1. Attached at Tab #1 is the list of all hourly rated Plating employees, their job classification, hourly rate, date of hire, date of birth and gender.
2. Because sickness and accident coverage is 100% self-funded, there is no insurance 'contract' and Goodrich does not pay any "premium." (Aetna processes claims for a monthly fee of $2.88 per employee.) The weekly S & A benefits is $260.00. The Summary Plan Description is attached at Tab #2.
3. The Aetna Managed Choice plan is entirely self-funded so there is no insurance "contract." Aetna's role is to process claims for a fee. Regarding the Kaiser HMO option, our agreement with Kaiser is attached at Tab #3. Also attached at Tab #3 is a letter from AON setting forth the premiums and employee contributions.
4. The life insurance coverage is $22,000.00 and the Company's monthly premium is $3.85 per employee.
5. Each employee's accrued vacation hours as of May 1, 2002 are attached at Tab #5.
6. Because the pension and 401(k) plans are self-funded, there is no "contract." The Company's matching contribution of 50% of the employee's contribution up to 6% of the employee's gross earnings represents the Company's 401(k) cost. Regarding the cost of the pension, attached at Tab #6 are the Company's most recent 5500 filing and audited financial statements. Also attached at Tab #6 is a list of all Plating retirees, their age and date of retirement.

By letter dated May 23, addressed to Borah, Minor responded to Lemin's May 17, letter.[53] Minor stated in the letter the information Lemin provided was incomplete, and Minor asked for the following information which he stated was omitted from Lemin's May 17, letter:

I have considered the testimony of Respondent witness Christina Bratun, an administrator, who distributed the mail for Respondent's Cleveland human resources department in 2002. Bratun testified that she did not read incoming mail, but opened the letters, date stamped them, and delivered them to the addressee. Bratun testified that she handled between 2 and 15 pieces of incoming mail a day, and testified to a certainty that she did not see Minor's March 15 letter, prior to May 13, when a copy was received from Respondent's counsel. There were 40 business days from the March 19, the estimated day of arrival of the March 15, letter at Respondent's facility, and May 13. On average, according to Bratun's testimony, she would have handled eight pieces of mail a day, or 320 pieces of mail, without reading the letters. I find, in these circumstances, Bratun's claims to have recalled when she first saw Minor's March 15, letter at the time of her testimony in June 2003 not worthy of belief. I also do not credit Bratun's testimony that she was asked to search for the March 15, letter. Moreover, even assuming, some type of search was conducted for the letter, I do not find that is inconsistent, with Jordan's admission that the letter had been received but misplaced.

[53] Lemin, in his May 17, letter, and Minor, in his May 23, letter, engaged in banter as to their positions about what occurred during negotiations concerning Minor's information requests. I have not repeated the statements contained the letters here, as I found it to be mainly repetitive of testimony at the trial that I have previously credited or discredited.

1. A copy of the Aetna Managed Choice plan. Obviously there has to be a plan, otherwise how can Aetna know what benefits and or benefit levels Employees are entitled to? The Union's Senior steward at Plating has been asking for a copy of this plan for at least a year prior to my request on March 15, 2002. If Aetna doesn't have a plan then certainly Goodrich must have a plan or a description of some kind.
2. If there is no "contract" as Mr. Lemin indicated on the pension plan, please provide a copy of the current pension plan for this group of employees. All I received from Mr. Lemin on May 17th was a 5500 report and financial data.
3. A copy of the current 401(k) plan that covers the Plating Operation employees.

Minor also stated in his May 23, letter that, "during our negotiations, the Union requested other information verbally which was never provided to the Union."

1. On April 5th, as a result of Mr. Wright's presentation, the Union asked for separate production records for the Plating Operations. Mr. Wright agreed to provide but as of this date nothing has been provided.
2. On April 15th the union asked for ISO 9000 standards, this was a result of the Company's statements that certain operations were required per ISO 9000, again nothing has been provided.[54]
3. On April 30th the Union asked for information dealing with Emergency and or Non-Emergency visits to Kaiser. Again this was requested because of the Company's contention that part of the health care cost increases was a result of non-emergency use of emergency facilities. The Union need breakdown for these costs for each individual who used either of these services, including any information the Company or Kaiser has to support your claim that this is resulting in an increase in health care costs.

Minor ended the letter by stating the Union is requesting this information be provided as soon as possible.

K. The May 23 Newspaper article

During the course of the strike, a reporter from the Cleveland Plain Dealer interviewed Busler, and there was an article published in that paper on May 23, which contains quotes from Busler. There is a statement in the article that "The union is seeking a $1 an hour increase for each of the three years. The company has offered yearly increases averaging 59 cents. The dispute is in the hands of the Federal Mediator." Busler testified he provided the reporter with this information when the reporter asked him what the parties were discussing concerning wages, and that her question was limited to wages. The Plain Dealer article does not say anything about withholding information or an unfair labor practice. Busler explained the reporter did not ask Busler if the Union had filed an unfair labor practice charge, or if he thought it was an unfair labor practice strike.

L. The May 28 bargaining session

On May 28, the parties attended a bargaining session held at Federal Mediation. Minor testified the parties made what they called supposals of what would occur if they each did

[54] Minor testified the Respondent's subsequent letter of May 31, provided an acceptable response for the Union's request for ISO standards.

certain things but that none of the supposals were acceptable to either party. Minor testified that, as of that time, Respondent had withdrawn its offer final offer based Gora's letter that it would be withdrawn if it was rejected. Minor testified Respondent had made a verbal offer on May 28, which had health care co pay back in it as an issue, and other things which lead Minor to conclude that it was a regressive proposal from Respondent's May 1 final offer. Niebauer testified that during the bargaining session on May 28, the Union was still demanding a one dollar an hour annual wage increase. She testified Respondent made a different proposal during the May 28 meeting than that set forth in its pre strike final offer. Niebauer concurred with Minor's terminology stating they labeled their proposals as supposals.

Niebauer testified her notes reveal Respondent had a new proposal on May 28, which had wage increases greater than Respondent offered on May 1. She testified Respondent also had a different proposal on medical benefits than it had proposed on May 1 in that Respondent was proposing that employees contribute percentages toward the premium cost in each of the three years of the contract. They were proposing 5 percent the first year, 10 percent the second year, and 15 percent the third year. Niebauer testified these were higher contribution rates than were in the parties' 1999 contract, and it was higher than Respondent's May 1 final offer. Niebauer's notes for May 28, read that the Union made a verbal proposal at 11 a.m. The notes then state:

> Company's Counter Proposal 5/20 Noon
> 1.GWI 75(cents), 60(cents), 65 (cents)
> * * *
> 5. Medical Insurance ee contributions 5%, 10%, 15%
>
> 12:20 Bill wont respond as long as medical is on the table. Would take our last best final.
>
> Company's Counter Proposal (never given as Union refuses med. Disc.
> 5. Medical Insurance 3%, 6%, 9%
> 1. GWI $1, .75, .65.[55]

M. The May 31 correspondence

By letter to Minor dated May 31, Borah stated, in response to your letter dated May 23, 2002, which the Company received on May 29, 2002, enclosed is the following information:

1. A copy of the Aetna Managed Choice plan.
2. A copy of the current Plating pension plan.
3. A copy of the current 401(k) plan that covers the Plating employees.
4. A copy of the AS9100 Aerospace standard.
5. A copy of the Kaiser Medical Utilization Report.

[55] Niebauer claimed she could not recall if the parties actually exchanged proposals on May 28, but testified Respondent was prepared to make a counter proposal on this date, which had a wage increase greater than the one Respondent proposed on May 1. However, Niebauer's notes clearly reveal that the parties did exchange proposals on May 28, and Respondent's proposal included an increase in its wage offer, in exchange for an increase in the employees' costs for medical co pay. Niebauer's notes confirm Minor's testimony that Respondent made a regressive proposal on health insurance costs during the May 28 meeting.

Borah stated in the letter, "I need further clarification regarding your request for 'Production records for the Plating Operations'. Can you please be more specific as to what production records you are requesting?" Borah stated, "If you have any further questions, please feel free to give me a call." [56]

Minor testified Jordan called him at home on the evening of May 31, and told Minor that Borah's May 31, letter and attached documents had been delivered to Minor's office after the office was closed. Minor went to his office Saturday evening June 1, and saw the material. Minor testified that after receiving Borah's May 31 letter, all the Union was missing was the productivity records and a few pages from the pension documents, which were not provided until September. Minor testified the following week he went to the UAW convention, and Minor did not return home until June 10. On June 10, Minor called the Federal Mediator and asked if a meeting was scheduled the next day. The mediator replied he had he had not heard anything from Respondent, and he was not going to schedule anything until they called him.

N. Respondent hires permanent replacements

On June 14, Minor received a letter from Respondent President Brian Gora, dated June 12. The letter reads, in pertinent part:

> In order to protect the long-term viability of the business, we have begun to hire permanent replacement workers and have made a preliminary decision to permanently off-load all Boeing commercial and the C-17 main shock strut, cylinder and piston work. We are available to discuss this off-loading decision and its effects upon your members. In the meantime, I want to make clear that so far as the company is concerned there are no offers outstanding or, if that is contrary to you understanding, all prior offers are hereby withdrawn.

On June 14, Minor sent by Fax and certified mail a letter to Gora stating the Union is making an unconditional offer to return to work with the right to continue to negotiate. By letter dated June 14, Gora informed Minor that Respondent was in receipt of the Union's letter regarding an unconditional offer to return to work. Gora stated a further response would be provided on Monday, June 17. By letter dated June 17, to Minor, Gora stated Respondent had suspended the hiring of permanent replacements, but that a substantial number had already been hired before Respondent received Minor's letter. Gora stated, "We currently have only twelve (12) positions which are not filled by a permanent replacement employee. We will recall twelve (12) strikers for Wednesday morning."

O. Remaining correspondence

By letter dated July 19, to Borah, Minor replied to Borah's letter of May 31. Minor stated that in response to Borah's letter, the Union was requesting the following information:

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[56] By letter to Borah dated May 31, Minor wrote, "As a clarification to my May 23, 2002 letter to you, please include the monthly premium for family and single coverage for hospitalization as part of the plan documentation requested. These costs were originally requested by the Union on March 15, 2002, but has still not been provided by the Company." By letter dated June 7, 2002, Borah wrote Minor, "Per your request, enclosed is another copy of the monthly premium for family and single coverage for hospitalization. These rates were in the third section of the binder that was hand delivered to you on May 17th."

1. Daily productivity numbers for the Plating Operations for the last calendar year prior to May 1st 2002.
2. Scrap records for the Plating Operations, including the percentage of scrap for total production at the Plating Operations along with the total dollar amount of that scrap, on a monthly basis for the term of the expired contract.
3. Any and all records dealing with shipping requirements, percentage of on-time delivery etc., on a monthly basis for the term of the expired contract.
4. In my prior letter to you on May 23, 2000, I requested various information on Kaiser emergency and non-emergency visits. The information you provided on May 31st deals with employees division wide and is not specific to Plating. Would you please provide information which is specific to the Plating employees? [57]

Tucholski responded Tucholski responded to Minor's July 19, letter by letter dated August 1, 2002. Tucholski stated:

1. 'Daily productivity numbers for Plating Operations for the last calendar year prior to May 1, 2002.' As was explained to you during negotiation sessions last spring, productivity at Goodrich is measured by both 'efficiency' and 'utilization.'[58] In order to calculate efficiency, there needs to be standards set by a manufacturing engineer. Although such production standards are set for the Landing Gear's machining operation, no such standards have ever been set for the plating operation. Therefore, with respect to plating, productivity cannot be calculated.

   Beginning this calendar year, the plating operation did begin tracking 'utilization.' Plating's utilization numbers have been posted on the bulletin board at the plant since January of 2002. Enclosed is a chart setting for the utilization figures for the time period January 1, 2002, through April 30, 2002.
2. 'Scrap records for the Plating Operations, including the percentage of scrap for total production at the plating Operations along with the total dollar amount of that scrap, on a monthly basis for the term of the expired contract.' Goodrich does not measure scrap by percentage at the site level. Goodrich measures the dollar value of the

[57] Minor gave the following explanation for the delay between Borah's May 31 letter and Minor's July 19 response. Minor testified that as of May 31, he was still in need of Plating production records. Minor testified that it took him six weeks to inform Borah what he wanted because after he received the May 31 letter, Minor went to the UAW convention in Las Vegas from June 1 to 10. Minor credibly testified that when he returned, he called the mediator to see if they could meet but June 25 was the next date, and then in the same week Minor returned there were the replacement issues and the unconditional offer to return to work which became the priority at the time. Minor testified he was reviewing records, and "It took me some time period to do it." He credibly testified that Respondent's attorney Hiller made an offer on June 25, and the productivity number "probably wouldn't have made a whole lot of difference at that point. It wasn't a major now as it was prior to May 1st." Minor testified that Respondent's offer of June 25, impacted on the Union's need for productivity information because now there was what Minor considered to be a huge take away proposal including a company proposal eliminating the union security agreement and of other items which were far more important than productivity at that time.

[58] I do credit Tucholski's statement in his letter that Respondent's productivity measurements were explained to the Minor "last spring." Rather, as set forth earlier, I have reached the opposite conclusion, and I find the statements in Tucholski's letter about what occurred during prior negotiations were written to create a record for the unfair labor practice case.

scrap. A chart showing the dollar value of scrap for the three-year period requested is attached. Monthly scrap reports are available for your inspection.

3. 'Any and all records dealing with shipping requirements, percentage of on-time delivery etc., on a monthly basis for the term of the expired contract.' I am not entirely clear of what you mean by the reference to 'shipping requirements, percentage of on-time delivery, etc.' Daily schedule sheets, maintained by Paul Pepin, are available for you inspection. I have enclosed a chart summarizing this information for the time period January 1, 2002 through April 30, 2002.
4. 'In my prior letter to you on May 23, 2002, I requested various information on Kaiser emergency and non-emergency visits. The information you provided on May 31st deals with employees division wide and is not specific to Plating. Would you please provide information that is specific to Plating employees?' Goodrich doe not have such information that is specific to Plating employees. Pat Borah has telephoned Kaiser and asked for such information, but was told that Kaiser does not have and cannot segregate such information either.

On August 23, Minor sent a letter to Pat Borah stating that several pages were missing from the pension plan Respondent had provided. By letter dated September 3, 2002, Respondent provided the requested information.

P. Analysis and conclusions

1. The information requests

a. Legal principles

In *Ethan Enterprises, Inc.,* 342 NLRB No. 15, JD slip op. at 6-7 (2004), the Board approved the following principles concerning a union's right to requested information:

> The duty to bargain in good faith requires an employer to furnish information requested and needed by the employees' bargaining representative for the proper performance of its duties to represent unit employees of that employer. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 437 (1967). A Union's request for information regarding the terms and conditions of employment of the employees employed within the bargaining unit represented by the union, is "presumptively relevant" to the Union's proper performance of its collective-bargaining duties, *Samaritan Medical Center,* 319 NLRB 392, 397 (1995), because such information is at the "core of the employee-employer relationship." *Graphics Communications Local 13 v. NLRB,* 597 F.2d 267, 271, fn. 5 (D.C. Cir. 1979), thus it is relevant by its "very nature." *Emeryville Research Center v. NLRB,* 441 F.2d 880, 887 (9th Cir., 1971).
>
> * * *
>
> In making this determination of relevance, the Board has followed the following principles:
>
> > Wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth; as to other requested data, however, such as employer profits and production figures, a union must, by reference to the circumstances of the case, as an initial matter, demonstrate more precisely the relevance of the data it desires. *Curtiss-Wright Corp. v*

> *NLRB,* 347 F.2d 61, 69 (3d Cir. 1965), cited with approval in *Coca Cola Bottling Co.,* 311 NLRB 424, 425 (1993).[59]
>
> Thus, if the requested information goes to the core of the employer-employee relationship, and the employer refuses to provide that requested information, the employer has the burden to prove either lack of relevance or to provide adequate reasons why it cannot, in good faith, supply the information. If the information requested is shown to be irrelevant to any legitimate union collective-bargaining need, however, a refusal to furnish it is not an unfair labor practice. (*Coca-Cola Bottling Co.,* 311 NLRB at 425 (citing *Emeryville Research Center v. NLRB,* 441 F.2d 880 (9th Cir. 1971)).
>
> The standard to determine a union's right to information will be 'a broad discovery type standard,' which permits the union access to a broad scope of information potentially useful for the purpose of effectuating the bargaining process. *NLRB v. Acme Industrial,* 385 U.S. at 437, fn. 6; see also Anthony Motor Co., 314 NLRB 443, 449 (1994). There only needs to be 'the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.' *Acme Industrial,* 385. U.S. at 437.

In *Ethan Enterprises,* supra, JD slip op. at 7, it was determined that the union's request for "employee names, addresses, phone numbers, job classifications, hours worked, rates of pay, and benefits, is presumptively relevant. As such, no showing of particular need is necessary." Similarly, the Board has found that a union is entitled to copies of health insurance and pension plans. See, *Honda of Haywood,* 314 NLRB 443 (1994); and *IMTT-Bayonne,* 304 NLRB 476 (1991). In *St. George Warehouse, Inc.,* 341 NLRB No. 120, JD Slip op. at 22 (2004), in finding that an employer unlawfully delayed in furnishing a union with health insurance premium information it was stated that:

> The Board has held that the premiums paid under health insurance plans constitute wages, and as wages, such information is presumptively relevant. *The Nestle Company,* 238 NLRB 92, 94 (1978). The cost of employee fringe benefits is particularly important during ongoing negotiations, and the 6-month delay in providing such information was improper and unlawful *Baldwin Shop' N Save,* 314 NLRB 114, 124 (1994).

In *Baldwin Shop' N Save,* supra at 124, fn. 8, it was noted that the court in *Sylvania Electric Products v. NLRB,* 358 F.2d 591 (1st Cir. 1966), cert. denied 385 U.S. 852, held "that the Board could properly find that a union was entitled to information concerning the cost of welfare benefits, where the Union sought 'better to evaluate the desirability of an increase in welfare benefits as against an equivalent increase in take-home pay.'"

A Union's request for information is not required to be in writing, nor is a union required to make repeated requests. *Bundy Corp,* 292 NLRB 671, 672 (1989). It has also been held that an employer has an obligation to furnish requested information without undue delay, and in a reasonable time. *Barclay Caterers,* 308 NLRB 1025, 1037 (1992); and *Sivals, Inc.,* 307 NLRB 986, 1007 (1992). In evaluating the speed with which the information is furnished, the Board considers the complexity and extent of the information sought, its availability, and the difficulty in retrieving the information. *Samaritan Medical Center,* 319 NLRB 392, 398 (1995). In *Good Life*

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[59] See *E.I. Dupont & Co,* 276 NLRB 335 (1985), where an employer was required to provide requested production related information, as a result of its proposal to restructure certain jobs within the bargaining unit; and *Calmat Co.,* 331 NLRB 1084, 1096, (2000), where requested information concerning the productivity of an employer's competitors was found to be relevant where the employer claimed the need of concessions to remain competitive.

Beverage Co., 312 NLRB 1060, 1062 fn. 9 (1993), the Board stated:

> Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow.[60]

An employer may not refuse to furnish information to a union on the ground that the union has an alternative source or method in obtaining the information. See *People Care, Inc.,* 327 NLRB 814, 824 (1999); *Orthodox Jewish Home for the Aged,* 314 NLRB 1006, 1008 (1994); and *KCET-TV,* 312 NLRB 15, 19 (1993).

In *Keauhou Beach Hotel,* 298 NLRB 702, 702 (1990), the Board stated that:

> It is well established that an employer may not simply refuse to comply with an ambiguous request and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information.[61]

An employer must provide a union with requested information in the employer's possession even if it is not in the precise form requested by the Union. See, *Pacific Maritime Ass'n,* 315 NLRB 24 (1994). In *Yeshiva University,* 315 NLRB 1245, 1248 (1994), it was stated that, when an employer "possesses the requested information but not in the form as requested, 'it must make some effort to 'inform' the union so that the union may, if necessary, modify its request accordingly.'"

In *NLRB v. Fitzgerald Mills Corp.* 313 F.2d 260, 266 (2d Cir., 1963); cert denied, 375 U.S. 834, the court held that, "failure to supply requested wage data is a refusal to bargain in violation of Section 8(a)(5) and (1), standing alone." The court went on to state, "And even if the Union negotiated a contract without the data, this does not render the information irrelevant." In *NLRB v. Yawman & Erbe Mfg. Co.,* 187 F.2d 947, 949 (2 Cir., 1941), the court stated:

> Nor is our determination that the information was relevant affected by the subsequent execution of a contract without disclosure. The most that can be inferred from the Union's action is that the advantages of a contract in hand outweigh those which the Union might later obtain when all relevant information would be available to it.

b. The Union's request for productivity information

The Union made verbal requests for productivity information for the Plating plant during the April 5 and 15 bargaining sessions, and by letters drafted by Minor on May 23, and July 19. However, the complaint only alleges the request made on April 5, and asserts that since that

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[60] See also, *Bundy Corp.* 292 NLRB 671, 672 (1989).

[61] See also *Taylor Hospital,* 317 NLRB 991, 994 (1995), review denied 82 F.3d 406 (3rd Cir. 1996), where it was specifically noted that the records relied on in determining the necessity of a layoff were within the knowledge of the respondent's officials, not that of the union, and that if the respondent did not understand the union's information request pertaining to those records it was their "duty to inquire, not to simply reject the request out of hand." See also, *A-Plus Roofing,* 295 NLRB 967, 972, fn. 7 (1989), enfd. 39 F.3d 1410 (9th Cir. 1994); *Barnard Engineering Co.,* 282 NLRB 617, 621 (1987); and *Colgate-Palmolive Co.,* 261 NLRB 90, 92 fn. 12 (1982).

date Respondent failed to furnish the Union with the requested information in a timely and complete manner. While the complaint was not specifically amended to allege the information requests on April 15, May 23, and July 19, the parties put on evidence concerning those requests, which were essentially follow up requests to that raised by the Union on April 5. Moreover, toward the end of the hearing, the following exchange occurred, when counsel for the General Counsel was asked if there was still any requested information the General Counsel was asserting that the Union still had not been provided:

> MR. WILSON: Two things, Your Honor. We think overall that as of September 3rd, 2002, with Mr. Minor's receiving GC 6, most of the relevant information at issue in this matter was provided. The two exceptions we would argue, are these. The formulary drug list, which you've heard testimony about. And based upon Mr. Tucholski's testimony yesterday, regarding how long the company has kept utilization records for the plating operation. We also believe the utilization records for the calendar year 2001 need to be provided.
> JUDGE FINE: Are you contending they were asked for?
> MR. WILSON: Based on Mr. Minor's request in GC 20, and Mr. Tucholski's response in GC 23, I believe so. Yes.

The referenced GC 20 is Minor's July 19, letter, and GC 23 is Tucholski's August 1, response thereto. Thus, I have concluded that the Union's information requests on April 15, May 23, and July 19, concerning production records were closely related to its request on April 5, and were fully litigated during the course of this proceeding. See, *Ormet Aluminum Mill Products,* 335 NLRB 788, 788, fn. 5.

I have concluded that Respondent unlawfully delayed in furnishing the Union with requested productivity information in violation of Section 8(a)(1) and (5) of the Act. The relevancy of the Union's information request is clear and was created by Wright's April 5, presentation. The credited testimony of Minor, Jordan, and Niebauer, reveals that at the outset of his presentation concerning the Landing Gear Division, Wright reported economic hard times, which Niebauer described in her notes as "gloom and doom." Niebauer's notes and her testimony reveal that Wright informed the Union that the performance of the Landing Gear Division was "dismal," and that the division was in a tailspin even before 9/11. Wright stated that one of the goals was to improve "throughput" which Niebauer's notes reveal was related to increasing productivity, and which Tucholski's testimony reveals was one of the metric measurements Respondent uses to measure performance at the Plating plant. Wright also showed the Union a slide during the meeting, which contained a heading as one of Respondent's goals was to "Continue Promoting a Culture of Continuous Improvement." Included in that category were "Embrace LEAN Principles" and "World Class in plating process." Niebauer explained the LEAN concept was to do things in the least waste way, and Wright belatedly acknowledged that across the division LEAN relates to improving productivity. Wright acknowledged the LEAN principles applied to the Plating plant.

As to the other goal in the slide, Wright testified he informed the Union that the Plating plant was "almost world class." While Jordan testified this was a complement, it is clear from the Union's reaction to the remark that their negotiation committee did not perceive it that way.[62]

[62] Wright also admitted that he meant by the "almost world class" remark that "you can never be happy with the performance at any site. You're always looking for continuous improvement." Similarly, Lemin testified that he understood Wright's remark to mean "they need to do things better and better" at Plating.

Rather, Valentine responded that the facility was world class before Tucholski returned as plant manager, and that Tucholski should be discharged because they were now only almost world class. Finally, Wright showed the Union committee a slide depicting separate graphs of productivity and past due hours at the Cleveland Machining plant. The productivity for Cleveland Machining, according to the graph was under 60 percent for the first three months of 2002, and the other graph showed significant past due hours for the delivery of machined parts. As Jordan testified, it was Respondent's intent concerning the presentation of its strategic plan for the Union to have this information in order to evaluate Respondent's contract proposals. Respondent clearly introduced productivity and the state of the Landing Gear Division as an element in negotiations in the hopes of limiting the Union's contract demands. By doing so, Respondent made the Union's request for productivity information specific to the bargaining unit employees relevant as an instrument to counter Respondent's argument.[63] Moreover, Respondent did not dispute the relevancy of the requested information at the time the request was made, and in fact it eventually turned the information over to the Union, albeit in a belated fashion. Accordingly, I have concluded that the Union was entitled to be provided with the requested productivity information. See, *Ethan Enterprises, Inc.,* 342 NLRB No. 15, JD. slip op. at 6-7(2004); *Curtiss-Wright Corp. v NLRB,* 347 F.2d 61, 69 (3d Cir. 1965); *E.I. Dupont & Co,* 276 NLRB 335 (1985); and *Calmat Co.,* 331 NLRB 1084, 1096, (2000).

Niebauer's credited testimony reveals that: that one of the slides Wright showed at his April 5, presentation contains a graph entitled, "Productivity-Cleveland Machining." Niebauer testified the graph does not apply to Plating. Niebauer testified that, after the slide was shown, Van Almen asked, can you produce separate quality, scrap, and productivity numbers for the Plating plant as they had for the Marble Ave. plant. She testified Tucholski looked at Van Almen and said he had quality and scrap numbers and he would look into the rest of them. Niebauer, at one point in her testimony, stated that Tucholski said he did not have productivity numbers for Plating. Wright then said he thought Tucholski should look into it to see if it made sense to develop productivity numbers. Tucholski said he would look into it. Niebauer testified in terms of Tucholski's response that, "I recall that he said he was going to get productivity and -- he was going to get qualities and scrap numbers for plating, that he couldn't get productivity. He could get everything Bill wanted but productivity."

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[63] I do not find Respondent's contention that Union officials admitted Respondent never specifically accused the Plating plant of poor productivity undermines the relevancy of the Union officials request for productivity information pertaining to that facility. Rather, Respondent raised productivity problems of the division, as well as of another Cleveland plant, in order to impact on the Union's bargaining position. It clearly brought productivity into play, and the Union was entitled to records for the facility for which they were bargaining. While Respondent's officials testified that the Plating plant was performing well based on Respondent's review of its metric records, the Union was entitled to this information in support of its claim that the unit employees' wages and benefits should be increased. Respondent also pointed out that Respondent posted metric records on a bulletin board to which the Union officials had access and there was testimony that the Union officials could have taken down these postings. However, there was no evidence presented that the Union officials were ever informed they could take down these management postings, without being subject to discipline. Moreover, the Board has held that an employer may not refuse to furnish information to a union on the ground that the union has an alternative source or method in obtaining the information. See *People Care, Inc.,* 327 NLRB 814, 824; *Orthodox Jewish Home for the Aged,* 314 NLRB 1006, 1008 (1994); and *KCET-TV,* 312 NLRB 15, 19 (1993). Here the Union could have taken the records off the bulletin board at the risk of discipline, or make a formal request for information, which they did do, and which Respondent ignored until they Union filed its unfair labor practice charge.

Despite Tucholski's assurances on April 5 that he would provide the Union with quality and scrap numbers, they were not provided. Moreover, during the April 15 bargaining session Minor told Respondent's committee that Wright had promised the Union some productivity numbers and they still had not received them. Minor testified he also asked for the ISO 9000 records on April 15, because he thought those could tie into productivity. Minor testified that he received very little response other than Jordan stating he would review it, and Tucholski stating he would have to check on the ISO 9000 forms because he was not sure if they could release the form because it was not Respondent's criteria. Minor's credited testimony is that the Union requested the ISO 9000 because he thought it tied to a proposal made by Respondent requiring operators to perform functions in addition to their normal job functions as Respondent's officials informed the Union it was required by ISO 9000, when Respondent was attempting to expand certain job duties. Minor testified the Union's request for the ISO forms tied into productivity because the scope of job duties tied into productivity. Tucholski testified he made a reference in his notes for the April 15, meeting concerning the ISO 9000, should any information be required, but admitted he did not follow up on it.

Thus, the Union twice requested productivity records, and never received a firm response from Respondent. Board law is clear that an employer may not simply refuse to provide information because there is an ambiguous request, but it must request clarification of the request. See, *Keauhou Beach Hotel,* 298 NLRB 702, 702 (1990); *A-Plus Roofing,* supra. at 972, fn. 7; *Barnard Engineering Co.,* supra. at 621; and *Colgate-Palmolive Co.,* supra. at 92 fn. 12. For an employer must also provide a union with requested information in the employer's possession even if it is not in the precise form requested by the Union. See, *Pacific Maritime Ass'n,* 315 NLRB 24 (1994).

After viewing Respondent's chart concerning Cleveland Machining, Van Almen requested productivity records of a similar nature for the Plating plant. It is true that Respondent did not have standard hours at Plating that were used for the productivity calculations at Cleveland Machining. However, Niebauer's notes of the April 5 meeting, reveal that Wright stated, "Calculate productivity is different at each plant. Agree we should have site metrics." Thus, despite Respondent's witnesses' testimony that they did not measure productivity at the Plating plant, Wright's statement, as documented in Niebauer's notes, reveals that they did measure productivity at Plating but using different criteria. The criteria used for measuring productivity should have been specifically explained to the Union, and the information provided. However, this was not done until the Union filed its May 6, unfair labor practice charge. In this regard, when properly motivated, Respondent was able to act promptly and comply with its statutory obligations. Tucholski informed Minor by letter dated August 1, that "productivity at Goodrich is measured by both 'efficiency' and 'utilization'." Attached to that letter, Tucholski provided the Union with Respondent's utilization charts for 2002.[64] Similarly, Wright, who testified, according to Respondent's mantra at the hearing, that standard hours were the only way to measure productivity, admitted at one point in his testimony concerning Plating that "We have other ways to measure productivity or performance." Wright cited what Tucholski described as metric categories of "utilization" and "throughput" for measuring performance at Plating, and he testified the key measure of performance at Plating was "throughput."

Following the filing the May 6, filing of the Union's unfair labor practice charge,

[64] Tucholski admitted during the hearing that Respondent began tracking utilization charts in 2001 at the Plating plant. To the extent those charts exist, I find they are encompassed by Minor's repeated requests for productivity information, and should be turned over to the Union.

Respondent began to comply with the Union's information requests. By letter dated May 23, Minor reminded Respondent of the Union's request for "production records" and the ISO 9000 standards. By letter dated May 31, Borah provided Minor with the AS9100 Aerospace standard, and asked for clarification of Minor's request for production records. Minor issued a letter on July 19, clarifying the request and Tucholski responded with the requested information by letter dated August 1. Thus, Respondent was able supply the Union the AS9100 standard within 9 days after it began to act on Union's request. Since the Union's initial request was made on April 15, and Tucholski admitted he ignored it, I have concluded that Respondent unlawfully delayed in providing the Union this requested information. Similarly, Respondent was able to provide the Union with scrap records within 13 days after it affirmatively acted on Minor's July 19, request. Since I have concluded that the Union initially requested this information on April 5, I have concluded that Respondent unlawfully delayed in providing the Union with this information for it has been long held that an employer has an obligation to furnish a union with requested information without undue delay and as promptly as circumstances allow. See, *Barclay Caterers,* 308 NLRB 1025, 1037 (1992); *Sivals, Inc.,* 307 NLRB 986, 1007 (1992); *Samaritan Medical Center,* 319 NLRB 392, 398 (1995); *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993).

I also find that it was incumbent on Respondent's officials to explain to the Union when the request was made for productivity records on April 5, that they did not have standard hours and could not provide the Union with those records any time soon, even if they decided at some point to create standard hours for the Plating plant. Moreover, I find it was incumbent on Respondent's officials to inform the Union on April 5, that they measured productivity at the Plating plant by "utilization" and "throughput", as well as by other metric records as Tucholski and Wright belatedly admitted, and that Tucholski made no effort to do so until his letter of August 1, letter following the Union's filing of its unfair labor practice charge.[65] I do not find Respondent's actions here were a result of a misunderstanding of the Union's request for productivity records. Rather, I have concluded that Respondent's officials demonstrated an intent to ignore the Union's requests as evidenced by their failure to provide the Union with scrap records which were admittedly requested by the Union on April 5 and in Respondent's possession, and the AS9100 standards which were requested on April 15 which were in Respondent's possession but not provided until after the Union filed an unfair labor practice charge. Accordingly, I find that Respondent failed to furnish the Union with requested, scrap,

[65] The parties had in fact maintained a side letter in the expired contract, which the Respondent sought to maintain in the new agreement. While Respondent's witnesses argued that they could not measure productivity at Plating, the language in the side letter further undermines their position, as the letter reads in pertinent part, "During the negotiations for the new Collective Bargaining Agreement, we discussed the need for Plating Operations to be more productive and efficient through improved safety, quality, delivery, throughput and cost." Respondent also made another proposal concerning "Alternative Work Schedules", which begins, "The parties agree that it is in their mutual interest to insure that the Cleveland Plating plant remains competitive and reached the highest levels of productivity possible. To this end, the following Appendix is agreed:" I do not find that the Union relied on these proposals in generating its information request concerning productivity as the Union's request was made in response to Wright's presentation at the April 5 meeting, before either of these proposals were presented. Moreover, Respondent withdrew its "Alternative Work Schedules" proposal before the start of the May 6, strike. However, I do view these proposals as further evidence that Respondent maintained a strong concern about productivity at the Plating plant, and that Respondent had measures in effect at the time of the Union's information request to measure productivity there such as "safety, quality, delivery, throughput and cost" to mention a few.

productivity records as well as the AS9100 standards in a timely fashion in violation of Section 8(a)(1) and (5) of the Act.[66]

c. Minor's March 15 letter and related information requests

Respondent's counsel conceded at the hearing that the information requested in Minor's March 15 letter was relevant and within the possession of Respondent. Respondent's concession is in conformance with established Board precedent. See, In *Ethan Enterprises, Inc.,* 342 NLRB No. 15 JD slip op. at 7 (2004)(request for employee names, addresses, phone numbers, job classifications, hours worked, rates of pay, and benefits, is presumptively relevant); *Honda of Haywood,* 314 NLRB 443 (1994); and *IMTT-Bayonne,* 304 NLRB 476 (1991) (a union is entitled to copies of health insurance and pension plans); and *St. George Warehouse, Inc.,* 341 NLRB No. 120, JD slip op at 22 (2004)(a union is entitled to health insurance premium information); and *Baldwin Shop' N Save,* 314 NLRB 114, 124 (1994).

The credited evidence reveals that Minor authored and had mailed to Lemin a letter, dated March 15, requesting information of the nature described in the above paragraph for negotiations set to begin on April 5. I have found Respondent received the letter shortly after it was mailed, but ignored the letter, as it did with verbal requests for information made during the course of negotiations.[67] Minor mentioned to Respondent's officials during the initial bargaining

[66] I do not find persuasive Respondent's assertion in its brief that it failed to provide the Union productivity records because of a misunderstanding that the Union was only interested productivity based on standard hours calculations as measured at the Marble Ave. plant, or that the Union was only making a casual inquiry as to whether Respondent was in possession of such records. Any doubt that the Union's inquiry was casual was eliminated when Minor repeated the request for the records on April 15. Moreover Tucholski admitted Minor brought the subject of productivity up again on April 15, and Tucholski's response was "I said I was still looking into it." Yet, Tucholski never informed the Union the results of his purported inquiry concerning productivity at the Plating plant. Similarly, Wright admitted he never followed up to determine the results of Tucholski's alleged inquiry. I have concluded that after the Union's April 5 request that Tucholski never made an additional inquiry about the creation of standard hours for Plating, nor did he intend to do so. Rather, prior to the Union's filing of its unfair labor practice charge, Respondent's responses to the Union's information requests were designed to side step and ignore them. This case is distinguishable from *Reebie Storage & Moving Co.,* 313 NLRB 510, 513 (1993), enfd. denied 44 F.3d 605 (7th Cir. 1995), cited by Respondent, standing for the proposition that, "The Board is reluctant to find a refusal to furnish information violation in circumstances where no formal request was made for information or where the failure to furnish information arose from a good-faith misunderstanding." In *Reebie Storage,* the employer responded immediately in writing to the union's information request and suggested to exchange information the union and the employer was requesting at the next bargaining session. However, the union did not further respond to the employer's offer and the Board concluded the employer could reasonably assume the union dropped its request. Here the Union's request was repeated at the following bargaining session. The Respondent merely ignored it as it ignored other requests for information made during the course of bargaining. In doing so, I find that Respondent's actions were not premised on a good faith misunderstanding.

[67] I do not find Respondent's informing the Union on May 15, that Minor's March 15 letter had been misplaced constitutes a defense to the timely provision of the requested information contained in the letter. Even assuming the letter was misplaced as opposed to ignored by Respondent's officials, it was incumbent upon them to have asked Minor for a duplicate copy so they could have provided the requested information in a timely fashion.

session on April 5, that he had requested health care cost information and it was not provided. Minor stated, during the April 29, session, that he had requested pension information and it had not been provided. On April 30, Minor requested a copy of Respondent's health master health insurance plans, as well as a formulary drug list for those plans. Minor, Busler, and Lemin's credited testimony reveals that the Union had been requesting a copy of the health care plans from Respondent since 2000, and they were not provided. Lemin's notes for the April 30, session reveal that during that meeting, Minor complained that he had requested the cost of health care and not received it. Niebauer also admitted at one point in her testimony that Minor stated several times during negotiations that the Union had been requesting copies of the health care plans for a long time.

I do not find Minor's failure to repeat the Union's information requests at 6 a.m. on May 1, when Jordan asked him if there was anything else Respondent could provide for the Union's May 5 ratification meeting constitutes a waiver of the Union's right to the requested information prior to that meeting. Respondent has shown a propensity during these negotiations to ignore the Union's requests for information. In fact, Lemin acknowledged that the Union had been requesting copies of the two health care plans used by Respondent since 2000, but they had not been provided. In these circumstances, Minor was not required to repeat his information request at 6 a.m. on May 1,after negotiating all night with Respondent for Respondent had displayed by its conduct that such a request would have been a futile act. I find that Respondent, as demonstrated by its course of conduct prior to the Union's filing of the unfair labor practice charge on May 6, had no intention of providing the Union with requested information. See, *Ormet Aluminum Products,* 335 NLRB 788, 803 (2001); *Automatic Sprinkler Corp.,* 319 NLRB 410, 417 (1995); and *Iron Workers Local 377 (M.S.B., Inc.),* 299 NLRB 680, 684 (1990) holding that a party is not required to engage in a futile act. Moreover, Van Almen informed Wright on May 2, during an encounter that Wright initiated that Respondent failed to provide the Union with requested health care information. Yet, Respondent still failed to provide the Union with any information until Lemin's letter of May 17, at which point copies of the Aetna health care plan as well as the requested formulary drug lists were still omitted from Respondent's response. These items were omitted, even though Jordan, Lemin, and Niebauer testified that the Union had requested copies of the master health plans and the formulary drug list on April 30.[68] The Respondent had not provided the Union with a copy of the formulary drug list as of the time of the unfair labor practice trial in June 2003. Respondent never provided the Union with an explanation for failing to supply the latter document, and there is no contention that Respondent was not in possession of the document.[69]

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[68] I have considered, but reject Respondent's argument that the March 15, letter, only called for the health plan contracts, and not the plan itself. Minor testified he wanted both the plans and the costs behind them. Any ambiguity in the March 15 letter, as to Minor's intent was specifically cleared up during the April 30, negotiating session, wherein Respondent's officials testified that Minor specifically asked for copies of the health care plans and the formulary drug lists. I do not view Minor's failure to repeat his request for the formulary drug list in subsequent correspondence to Respondent to constitute a waiver of the Union's right to receive the list. Respondent's officials never testified that was the reason the list was not provided. Moreover, Respondent was well aware that the Union's request for the list was outstanding as Respondent's counsel brought up the list on cross-examination and through the direct testimony of Respondent's witnesses.

[69] While the Union's request for the formulary drug list was not specifically set forth in the complaint, it is closely related to the Union's request for the "present contract on hospitalization and medical coverage" which is set forth in the complaint. Moreover, counsel for the General Counsel informed Respondent at the hearing that the failure to provide the formulary drug list

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Accordingly, I find that Respondent demonstrated a pattern of ignoring the Union's written and verbal information requests during this set of negotiations until after the start of the May 6, strike, when the Union had filed an unfair labor practice charge. I find that Respondent received Minor's March 15, letter prior to the start of negotiations on April 5. The letter requested information to aid the Union in the upcoming contract negotiations, and the parties met on 10 occasions, prior to the start of the May 6 strike, during which time, Minor made verbal information requests, which Respondent also ignored. Moreover, Lemin admitted that the Union had been requesting copies of the health care plans since 2000, a request renewed during the negotiations, and the Respondent still failed to provide them prior to the strike. Respondent's actions here where compounded by its informing the Union on the afternoon of May 1, that if the Union did not accept Respondent's final offer by May 5, the offer would be withdrawn, and replaced by less generous offers. Respondent set a deadline for the Union to take or lose its offer that had resulted from extensive negotiations between the parties without providing the Union with any of its requested information. I find that Respondent violated Section 8(a)(1) and (5) of the Act, by its unlawful delay in providing the Union with requested information described in complaint paragraph 6(A), and by its failure to provide the Union with a copy of the formulary drug lists for each of its medical plans. I note that there is no contention that Respondent was not in possession of any of the requested materials at the time the Union made its information request. I have also considered Niebauer's admission, that Respondent could have received requested information in the possession of corporate headquarters in Cleveland the next day if Respondent had desired to be forthcoming with the requested information. Accordingly, I find Respondent engaged in an undue delay in furnishing the Union with requested information, and failed to furnish the Union with copies of the formulary drug lists for its health care plans with no justification for doing so. See, *Barclay Caterers,* 308 NLRB 1025, 1037 (1992); *Sivals, Inc.,* 307 NLRB 986, 1007 (1992); *Samaritan Medical Center,* 319 NLRB 392, 398 (1995); *Good Life Beverage Co.,* 312 NLRB 1060, 1062 fn. 9 (1993); and *Bundy Corp.* 292 NLRB 671, 672 (1989).

2. The May 6 strike was an unfair labor practice strike

a. Legal principles

In *Dorsey Trailers, Inc.,* 327 NLRB 835, 855 (1999), enfd. in relevant part 233 F.3d 831 (4th Cir. 2000), it was stated that:

> The character of a strike depends on its cause. Thus, a work stoppage by employees is considered an unfair labor practice strike if it is motivated, at least in part, by an employer's unfair labor practices. *C-Line Express,* 292 NLRB 638 (1989). Characterization of a strike as such is not dependent on a finding that the strike would not have occurred but for the commission of the unfair labor practices. *Decker Coal Co.,* 301 NLRB 729, 746 (1991). Rather, so long as an unfair labor practice has 'anything to do with' causing the strike, it will be considered an unfair labor practice strike. *Child Development Council of Northeastern Pennsylvania,* 316 NLRB 1145, fn. 5 (1995), quoting *NLRB v. Cast Optics Corp.,* 458 F.2d 398, 407 (3d Cir. 1972), cert. denied 419 U.S. 850 (1972).

A causal connection between an employer's unlawful conduct and a strike may be inferred from the record as a whole. See, *Child Development Council of Northeastern Pennsylvania,* supra at

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was being alleged as violative of the Act, and the matter was raised by Respondent's counsel at the hearing and was fully litigated.

1145, where the Board noted that an unlawful threat was made just three days prior to the start of the strike. The threat was discussed with employees at a strike vote meeting held that evening. Employee negotiators who had first hand knowledge of the threat participated in the strike. After the discussion, the membership held a ratification vote on the Respondent's final contract offer and voted to reject it. The membership then held a separate strike vote, and the employees overwhelmingly voted to strike. The Board concluded that it was reasonable to infer that the threat, which was discussed and became a matter of consternation contributed to the employee's decision to strike.

In *C-Line Express,* 292 NLRB 638, 638-639 (1989), the Board set forth the following principles concerning the conversion of an economic strike to an unfair labor practice strike:

> The Board has long held that an employer's unfair labor practices during an economic strike do not ipso facto convert it into an unfair labor practice strike. Rather, the General Counsel must establish that the unlawful conduct was a factor (not necessarily the sole or predominant one) that caused a prolongation of the work stoppage. As the First Circuit Court of Appeals aptly observed in *Soule Glass Co. v. NLRB,* this search for a causal link is often problematic, leading the Board to rely on both objective and subjective considerations:
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> > Applying objective criteria, the Board and reviewing court may properly consider the probable impact of the type of unfair labor practice in question on reasonable strikers in the relevant context. Applying subjective criteria, the Board and court may give substantial weight to the strikers' own characterization of their motive for continuing to strike after the unfair labor practice .... However, in examining the union's characterization of the purpose of the strike, the Board and the court must be wary of self-serving rhetoric of sophisticated union officials and members inconsistent with the true factual context. [652 F.2d 1055 at 1080 (1st Cir. 1980).]
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> However, the presence or absence of evidence of such subjective motivations has not always been the sine qua non for determining whether there has been a conversion. Certain types of unfair labor practices by their nature will have a reasonable tendency to prolong the strike and therefore afford a sufficient and independent basis for finding conversion. The most notable examples typically involve an unlawful withdrawal of recognition, which may be accompanied by a course of other unlawful conduct including withdrawal of contract proposals, refusals to meet and bargain, and recognition of another union. [FN4] The common thread running through these cases is the judgment of the Board that the employer's conduct is likely to have significantly interrupted or burdened the course of the bargaining process. Thus, when an employer has unlawfully withdrawn recognition from the bargaining representative or engaged in bad-faith bargaining during an economic strike, and it appears from the record that such unlawful conduct necessarily prolonged the strike, the Board has found that the economic strike has converted to an unfair labor practice strike. See *Powell Electrical Mfg. Co.,* and *Brooks & Perkins, Inc.,* supra.
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> Finally, while there may well be situations in which an employer's unlawful refusal to provide information may obstruct the progress of bargaining over the economic issues over which the strike is being waged, we do not think that the information requested and refused here falls into that category. Shortly after the strike commenced, the Union made an information request asking for the particulars surrounding the sale of the Respondent's trailers and, in addition, asking for information regarding the impact of the sale on unit employment and regarding the hiring of strike replacements. It is undisputed

> that the request was ignored. Although this information was clearly relevant to the Union in exercising its responsibilities as the exclusive bargaining representative of unit employees, and we affirm the judge's finding that the Respondent's refusal to provide that information was violative of Section 8(a)(5) and (1), the information requested was not germane to the issues that stood in the way of the parties reaching agreement on a contract. Thus, in the absence of any evidence that this was known to the strikers or that it was linked to an issue that was proving an obstacle in negotiations, we decline to assume that it prolonged the strike.

In *Orthodox Jewish Home for the Aged,* 314 NLRB 1006, 1008, (1994), the Board approved a finding of an unfair labor practice strike where the employer refused to provide requested Medicaid information which related to its demand for a one year contract, until three weeks after the issuance of the unfair labor practice complaint. In finding the strike to be an unfair labor practice strike, the judge stated the following:

> The information request was resolutely pressed by the Union and it related directly to one of the main issues (contract duration) in the negotiations (cf. *C-Line Express,* 292 NLRB 638 (1989); and I find probable and credit Regan's claim that on the morning of February 22, just prior to their strike vote, assembled union members were told that denial of the information request would be pursued through an unfair labor practice charge. I attribute no special significance to the circumstance that the Union's effort to generate public sympathy and support during the strike did not include publicizing Home's failure in that regard but instead focused exclusively on easily understood "bread and butter" issues. See *Lifetime Door Co.,* supra. I conclude that Home's failure immediately to reinstate striking employees on receipt of their unconditional offer to return was discriminatory in violation of Section 8(a)(1) and (3).

Similarly, in *Gas Spring Co.,* 296 NLRB 84, 100, (1989), enfd. 908 F.2d 966 (4th Cir. 1990), it was determined that the employer's unlawful refusal to provide a union with requested financial information constituted a substantial cause of a strike. It was stated therein that:

> The Board has held that picket sign language is not necessarily determinative of the purpose of the strike and that the absence of any reference to the strike being a protest against an unfair labor practice does not exclude such a practice being the cause of the strike. *Lifetime Door Co.,* 179 NLRB 518, 522-523 (1969); *Head Division, AMF,* 228 NLRB 1406 (1978), enfd. 593 F.2d 972, 979-981 (10 Cir. 1979).

In *Gas Spring Co.,* supra. at 100, it was concluded that:

> …Respondent's position of inability to pay and failure to produce proof that it was unable to grant increases and needed concessions constituted a substantial cause of the strike. *Buffalo Concrete,* 276 NLRB 839, 841-842 (1985), enfd. in relevant part sub nom. *Washington Materials v. NLRB,* 803 F.2d 1333 (4th Cir. 1986); *Stanley Building Specialties Co.,* 166 NLRB 984, 986 (1967), enfd. Sub nom. *Steelworkers Local 5571 v. NLRB,* 401 F.2.d 434 (D.C. Cir. 1968), cert. Denied sub nom. *Stanley-Artex Windows v. NLRB,* 395 U.S. 946 (1969); *Stafford Trucking, Inc.,* 166 NLRB 894 (1968), enfd. 418 F.2d 244 (5th Cir. 1969).[70]

[70] The above cited cases provide additional examples of where the failure to provide requested information contributed to unfair labor practice strike findings.

b. Analysis

In the instant case, on March 15, Minor sent Lemin a letter requesting information to prepare for upcoming contract negotiations, which despite Respondent's denials, I have concluded was received by Lemin in a timely fashion. Minor provided Local 2333 President Cantale with a copy of the letter, and Local 2333 Plating Plant Chief Steward Busler was also shown a copy of the letter. The letter, among other things, requested a seniority list showing employees names, job classifications, pay rate, date of hire and date of birth; a copy of the contract for sick and accident insurance benefits and the premium Respondent pays; a copy of the contract on hospitalization and medical coverage and the monthly premiums for single and family coverage; the monthly premium Respondent pays for employee life insurance; and a copy of the pension/401(k) contract and the cost contribution for the same, as well as the name, age, and date of retirement of those already retired.

During the parties' initial bargaining session on April 5, Wright made a presentation concerning the Landing Gear Division, of which the Plating Plant was a part. Wright described economic hard times or "gloom and doom" as reflected in Niebauer's notes. He stated performance of the Division was dismal, and that customers were "pissed off" because Respondent was behind in their deliveries. Wright stated Respondent was interested in improving performance citing such productivity principles and LEAN and "Continue Promoting a Culture of Continuous Improvement." The same slide states as a goal for Respondent to be "world class in plating" to which Wright informed the Union team that the Plating plant was only "almost world class." Wright also showed a slide depicting the productivity and passed due hours rating for the Marble Ave. machine facility, which showed less than stellar performance. This lead Union negotiating committee member and Plating plant employee Van Almen to ask for scrap, quality, and productivity numbers for the Plating plant. Plant Manager Tucholski stated that he that he had quality and scrap numbers, but that he did not have productivity numbers for the Plating plant. Wright told Tucholski to look into whether it made sense to develop productivity numbers for the Plating plant, and Tucholski said he would do so.

During the April 5, meeting, Jordan stated that there was an escalation of Respondent's medical costs under the current agreement. Minor voiced opposition to Respondent's plan to propose increased medical cost sharing for the unit employees, and stated that he had requested information on this, concerning his March 15 letter, and it had not been provided.

During the April 15, bargaining at Van Almen's suggestion, Minor stated Wright had promised the Union some productivity numbers, and they had still not received them. Van Almen also suggested, and Minor requested Respondent to produce an ISO 9000 form, which Respondent's officials had sighted as justification for increasing the job duties of one of the unit positions.

The parties began negotiating economics on April 29, just one day before the current contract was set to expire. At that time, they had reached agreement on all non-economic issues except for Respondent's refusals to provide an office for Plating plant Chief Steward Busler. However, Minor had not received any of the Union's requested information. During the April 29, session, the parties discussed their health care and pension proposals. Minor informed Respondent's officials that he had requested information concerning the pension plan from Lemin's predecessor a year earlier, and that he had followed it up with an information request to Lemin last month. Minor received no response to his remarks.

At the start of the April 30, session, beginning around 10 a.m., Minor stated that the contract expired by midnight, and that he thought the parties could do everything they needed to

do to get a new agreement by that time. The Union presented its third economic proposal around that time, and Jordan stated that Respondent could not get close to the Union's proposal on wages. Minor replied there was a $6 an hour difference in wages between the Plating plant and the Marble Ave. plant, and that Plating needed to catch up to Marble Ave. Jordan replied they needed to compare apples to apples, that the Plating plant should be compared to other Plating facilities, and Respondent's wages were not behind other Cleveland area plating facilities.

The Union's fifth economic proposal was delivered around 7 p.m. on April 30. It is stated in paragraphs 7(e) and (g) the Union is willing to retain the employee medical contribution rates in the expiring contract if the Respondent withdraws its proposal to increase medical and dental contributions. Subparagraph 7(f) under insurance states, "Maintain exact coverage, including drugs." During the April 30 meeting, Minor made a request for the formulary drug list, which is a list kept by the insurance company setting forth covered drugs. Minor made the request citing a grievance Busler had filed during the term of the 1999 contract because the insurance would not cover viagra. Minor also asked for copies of the master medical plans on the evening of April 30, citing an incident where Van Almen had gone to the hospital for a skin ailment, and was denied coverage. Minor stated he wanted the medical plans and the drug list to prevent similar incidents from occurring in the future. Concerning the formulary drug list, Jordan testified that he was sure Respondent's committee said we will get it for you. It was at Busler's suggestion that Minor asked for a copy of the medical plans. Busler also asked Minor to convey to Respondent that for the past three years the Union had been requesting a copy of the medical plans to be able to know what was covered so employees would not try to receive a particular service for which there was no coverage.

The April 30 bargaining session went through the night to early morning hours of May 1. During this session, Jordan told Minor that going back to the 1999 contract for employee contribution rates for health care would have a huge cost and effect the outcome on the total package. Jordan said Respondent would have to eat the cost of the premium increases in the future, which would cut into any wage increase. Minor credibly testified that he told the company during the April 30 to May 1 sessions, concerning the health care package that "we still haven't been provided the information we needed on the plan for hospitalization." Minor testified he received no response from the Respondent when he made this remark. Lemin's bargaining notes for April 30 at 9 p.m., quote Minor as stating, "Asked for cost of insurance and not get." Lemin testified, in reference to the notes, that he knew there was a note about Minor complaining he had asked for the cost of health care insurance and not received it.

The Union's seven economic proposal was given on May 1 at around 1:30 a.m. and Respondent's seventh economic proposal was tendered in response. Respondent agreed to the Union's outstanding proposal to return to employee medical and dental insurance contribution levels as they were in the 1999 contract. The Union's eighth economic proposal was given to Respondent on May 1, around 4 a.m. The Union's proposal Section 7(f) states maintain exact coverage including drugs. Jordan testified he interpreted this to mean stay with the 1999 contract. Jordan testified Respondent was not trying to change the existing medical plan in its proposal. Jordan testified to his understanding there was an agreement on medical coverage at the time, and there was no dispute on medical cost sharing.[71] Minor testified the

[71] While Jordan maintained there was an agreement on medical coverage, Respondent took the position on September 19, 2000, in a step 3 in response to Busler's grievance that "It is the Company's position that the specifics of the Medical Plan such as drugs covered or not covered is not grievable." It stated in the grievance answer quoting from the contract that:

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medical issue was off the table as it related to cost sharing, but not as it related to the entire package because Jordan had tied the size of the wage increase and other benefits which were still in dispute to the amount the employees paid for their health insurance. At that time, the Union was proposing a wage increase of a dollar an hour for each of the 3 contract years.

After the Union made its eighth economic proposal and before the Company made its final offer, Jordan had a side bar conference with Minor. Jordan told Minor that Jordan's outside limit on wages a four percent increase the first year and three percent for each of the two subsequent years of the contract. Minor said he was having difficulty getting his committee to accept the three percent increases. Minor said if Jordan could get it to four percent for each year, Minor would take it back to the membership. Following the side bar, Jordan received a approval from division Vice Presidents Wright and Strehle to raise Respondent's wage offer to 4 percent for each of the contract years, which based on a weighted average was the equivalent of increases of $.57, $.59, and $.62 for the three contract years.

Jordan delivered the four percent per year wage increase offer to the Union, which took a caucus. Lemin testified that, following the caucus; Minor stated the Union committee was not happy with the economics or the wage increase. Jordan testified that Minor stated the Union committee had looked at Respondent's final offer and felt the wage offer was too small Minor said they would take it back to the membership but would not sign a tentative agreement and would not recommend ratification. After Minor's announcement there was another caucus, during which Jordan had a side bar with Minor and Busler. Busler was wearing a shirt that said, "In It For The Money." Jordan credibly testified that: During the side bar, Minor said the committee feels they have got to have more money in that the catch up to the Marble facility was a major thing on their mind. Busler said Respondent needed to give more money and could give more money. Busler referenced Respondent President Dave Burner stating Burner had received a two million dollar increase. Busler also said he had to have an office.

Following the side bar with Minor and Busler, the parties reconvened at around 6 a.m. Jordan asked if there was anything Respondent could do to prepare the Union for their ratification meeting. Minor responded he did not think there was anything other than producing copies of the final offer.[72] The parties parted around 6:30 a.m. on May 1.

The parties reconvened at 4 p.m. on Wednesday May 1. Strehle and Wright were there in addition to Respondent's bargaining team. They delivered a letter from Brian Gora, the president of the Landing Gear Division, which stated, "Attached is the Company's last, best and final offer for a new collective bargaining agreement. It is open for acceptance until midnight, Sunday, May 5. If this offer is not ratified by the Sunday deadline: (a) the offer lapses; (b) any future offer will be less generous, including increased medical cost sharing; …". Minor responded that Gora could not do that, and that he thought they were coming back at 4 p.m. to negotiate further. Minor said Gora's statement that they would remove the offer if it was not

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> …The specifics of coverage such as which doctors and/or drugs that will or will not be covered under the medical plan has never been negotiated. In addition, the Medical Plan Summary in the appendix states that: 'In case of any discrepancy, the terms of the plan document will apply.'

Yet, Respondent during the course of 2 years of requests, including those made during the 2002 contract negotiations at issue herein, steadfastly prior to the May 6 strike and unfair labor practice charge refused to provide the Union with a copy of the medical plans.

[72] Minor testified it was customary for Jordan to pose such a question, because Respondent always prepares a summary of its offer for the Union's membership meeting.

ratified was not legal. Minor said he could have struck Respondent at the end of the earlier bargaining session when they did not have a tentative agreement, but he did not because he hoped they were going to come back and work out an agreement. Minor said he wanted the members to vote on the agreement. During the meeting, Busler characterized Respondent's final offer as an insult and Busler stated if Respondent could pay its president two million dollars, they ought to pay the employees more than they offered. By the end of the session on May 1, the Union had not received any information that the Union officials had requested in the March 15 letter, or verbally during negotiations.

As reflected in the terms of the Union's eighth offer and Respondent's final offer they were apart on wages, on the pension in terms of benefit size for years of service and the start of years for credited service; the COLA formula, on the life insurance benefit, on the size of Respondent's 401(k) contribution, and some other items including an office for Busler.

On May 2, Wright approached Van Almen at work. Wright said the company felt they offered the Union a good contract. Van Almen said he was not there to negotiate. Wright said he believed health care was an issue they had taken off the table. Van Almen said you did not give us the health care information and the employer costs we had asked for. Wright said well the pie is only so big and that because health care was an issue they had taken off the table, there was nothing left for anything else that the union wanted.

The Union held its contract ratification meeting on May 5. Prior to the meeting, Respondent had sent employees a copy of its final offer. As a result, the employees were upset and noisy when they arrived at the meeting. Minor opened the meeting and explained Respondent had presented their final offer. Minor read Gora's letter. Minor said the committee was not recommending the contract, but they had agreed to take it to a vote. Minor reviewed Respondent's proposal with the employees. Minor then explained he had made various information requests that had not been provided, and that if the contract was voted down, Minor felt it should be an unfair labor practice strike because Respondent had denied his information requests. The vote was 53 to 5 against the contract offer. After the vote was taken, Minor stated he was going to file an unfair labor practice charge over Respondent's refusal to provide requested information. Minor told the employees if there was a strike there was an advantage if they could get the strike ruled an unfair labor practice strike in that they could not be replaced. Minor asked the employees not to go on strike when they rejected the contract and they did not vote to strike at that time. He advised them to keep working while Minor went to Federal Mediation to schedule another bargaining session. During the meeting, Minor told the employees he had requested health care plans, productivity records concerning the Plating plant, and the pension plan, and those records were not provided. Busler's testimony reveals Minor told employees it was hard to answer their questions without the information he had requested.

Minor filed an unfair labor practice charge over Respondent's refusal to provide information on May 6. Minor spoke to Busler by phone on the morning on of May 6 and told him that Minor had been in touch with the federal mediator trying to get a meeting scheduled and that Minor had filed charges with the NLRB. Busler worked the 7:00 a.m. to 3:00 p.m. shift on May 6. Busler announced the strike on that date by word of mouth at around 2:55 p.m. Busler spoke to Minor and Cantale before the strike that day. Busler told them the employees in the shop were upset because they felt the should not be working because it was helping Respondent, although Respondent was not negotiating in good faith. Busler testified he told Minor the people were not happy with the contract, and they were not happy with Respondent's refusal to provide any information. Busler testified they were trying to give Respondent time to respond to the Union's request to meet the next day to try and work out a contract. However,

Respondent was stonewalling and not getting back to them. Minor's advice to delay a strike was over ruled, "Because we told Bill Minor what the attitude of the people in the plant was, that their attitude was that we're helping the company out by putting the product out when they're not giving us the information that we requested, not giving us a fair contract offer in our -- in the people's opinions. And that they wanted to be out on the street instead of in the shop, which is what they told Bill Minor on Sunday, and 24 hours later, we were trying to get the issue resolved, and it still hadn't been resolved by the company."

The first bargaining session after the start of the strike was held on May 15, at the federal mediator's office. During the meeting, Minor told Jordan that Respondent's final offer had been rejected 53 to 5. Minor explained to Jordan that wages, 401k, pension, and the COLA were major issues with the employees. Jordan told Minor that Jordan wanted to talk about the unfair labor practice charge. Jordan asked what information Minor had not received. Minor said they did not get any of it. Jordan told Minor that someone on Respondent's team had misplaced Minor's March 15, letter. Jordan acknowledged, during the meeting, that Minor had requested health care information, to which Minor replied that he had done so numerous times. In a conversation with the mediator, Minor said he was not there to bargain over an unfair labor practice strike. Minor said he would let the National Labor Relations Board handle that. Similarly, Niebauer's notes of the meeting reveal that Minor informed Respondent's officials that the employees were engaged in an unfair labor practice strike.

I find that the strike beginning on May 6, at the Plating plant was an unfair labor practice strike in that it was motivated, at least in part by Respondent's unfair labor practices. See, *Dorsey Trailers, Inc.,* 327 NLRB 835, 555 (1999). I find that the information requested by the Union was central to the outstanding disputes leading up to the strike. The Union had requested both copies of the health plans and Respondent's health care plan costs by letter, and repeatedly during the course of negotiations. In fact, the scope of health care coverage had been a dispute between the parties since at least 2000, and since that time Respondent had refused to provide the Union with copies of its health care plans. The dispute about the health care plan coverage surfaced at the April 30, meeting, where a grievance filed by Busler and an coverage dispute concerning Van Almen were cited as reasons the Union needed copies of the health care plans, and the formulary drug lists for the plans. In fact, Busler asked Minor to inform Respondent's committee that he had been requesting the plans for 3 years, and it was at Busler's urging that Minor renewed the request during the April 30, bargaining session. While the parties, prior to the start of the strike reached agreement to return to health care co pay as it was in the 1999 agreement, this did not resolve health care as an issue as Jordan in a conversation with Minor, and Wright in a conversation with Van Almen had linked Respondent's position on health care costs to limiting the size of the employee wage increases as well as the size of Respondent's overall economic package. Yet, Respondent failed to honor the Union's repeated requests for health care costs and a copy of the plans, a request that Van Almen, a striker, and a member of the Union's negotiating committee had renewed with Wright on May 2. Moreover, it was Van Almen who requested the productivity information from Respondent in response to Respondent's creating that issue during the April 5, session in an effort to persuade the Union of the financial and performance problems of the company in an effort to convince the Union to temper its proposals. Van Almen's April 5 request was ignored, and when Minor renewed that request on April 15, at Van Almen's urging, the request was again ignored. Minor had requested a copy of the 401(k) plan and pension plan and costs for each in his March 15 letter, and he renewed the request for pension information during the April 29, meeting. Yet, this request was also ignored. Minor testified that the Union had previously requested a copy of the pension plan during the 1999, agreement to verify agreed upon changes in the plan, however, a copy was never provided. At the time of the May 6 strike, the size of Respondent's contributions to the pension plan and 401(k) plans were in dispute. In other words the

requested information, which Respondent refused to provide the Union was at the heart of the issues in dispute between the parties, and Respondent's refusal to provide that information undercut the Union's ability to evaluate Respondent's proposal and was a major contributing factor to the cause of the strike. See, *Orthodox Jewish Home for the Aged,* 314 NLRB 1006, 1006 (1994); *C-Line Express,* 292 NLRB 638, 638-639 (1989); and *Gas Spring Co.,* 296 NLRB 84, 100 (1989), enfd. 908 F.2d 966 (4th cir. 1990).

There are other factors leading to the conclusion that Respondent's unlawful refusal to provide the Union requested information contributed to the strike. During the May 5 contract ratification meeting, in front of the whole bargaining unit, Minor informed the employees that Respondent had refused to provide the Union with requested health care, pension, and productivity information, that Minor thought Respondent's actions were an unfair labor practice, and that Minor was going to file an unfair labor practice charge the next day. Thus, the unit employees were informed of the information dispute, and that the Union's lead negotiator thought Respondent was engaging in unfair labor practices shortly before they voted to reject the contract, and the day before they went out on strike clearly signifying that Respondent's unfair labor practices in the circumstances here played a role in the employee decision making. See, *Orthodox Jewish Home for the Aged, supra at* 1006. I also note that Busler, whose decision it was to start the strike was on the Union's negotiating committee and had received a copy of Minor's March 15, letter requesting information prior to the start of negotiations. Similarly, both Busler and Van Almen, as members of the negotiating committee were present when Respondent ignored the Union's repeated verbal requests for productivity, health care, and pension information. Thus, I have credited Busler's testimony that Respondent's refusal to provide the requested information was one of the factors that lead him to call and participate in the strike.[73] I also have credited the testimony of strikers Van Almen, McGuire, and Mosnja's that they were informed of Respondent's refusal to provide information and the nature of the requested information on May 5, and that Respondent's actions had a causal effect on their decision to engage in the May 6, strike.[74]

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[73] In crediting Busler's testimony that the information requests played a role in his decision to strike I have considered his demeanor and the content of his testimony. It is clear from the credited testimony that Busler placed great import on the size of Respondent's wage increase. However, it was also at Busler's urging, and part of an ongoing dispute that he had with Respondent, that Minor requested a copy of the health care plans on April 30. Busler was also present during the repeated requests for information made during the course of negotiations, and Respondent's ignoring those requests. Busler was informed that Minor intended to file an unfair labor practice charge on May 5 and he was a aware that the lack of the requested information caused difficulty in the Union's answering questions raised by the employees during the May 5, ratification meeting. Minor also informed Busler that he had filed the charge on May 6, and Busler credibly testified that he, as well as other employees, grew impatient with Respondent's proposals and the failure to provide information and went on strike that afternoon. In sum, I found Busler to be a proud individual, who was concerned that the Plating plant's wages were behind the Marble Ave. facility, that as a the top Union official at the Plating plant he wanted an office to conduct union business, and that he found Respondent's repeated unlawful refusals to provide the Union with requested information to be an affront to the Union and to undermine the bargaining process, all of which went into his decision to call the strike.

[74] Van Almen was one of the individuals whose information requests had been ignored, and McGuire testified in credible detail as to how he was concerned about health care and pension coverage and that Respondent's failure to provide the Union with the requested plans played a direct role in his decision to strike.

Given the sequence of events leading up to the strike, I do not find Minor's efforts to reach a contract without the requested information to undermine the Union's claim that it was relevant and necessary. Minor could reasonably conclude that the advantages of a contract in hand outweighed the possible gains, which might be later obtained by acquiring the requested information. See, *NLRB v. Fitzgerald Mills Corp.,* 313 F.2d 260, 266 (2d Cir. 1963); cert denied, 375 U.S. 834, and *NLRB v. Yawman & Erbe Mfg. Co.,* 187 F.2d 947, 949 (2d Cir. 1941). Moreover, here the parties failed to reach an agreement and the provision of the requested information may have helped the parties break the dead lock that lead to the strike. I have considered the Union's failure to list the strike as a unfair labor practice strike on its picket signs, and Busler's failure to mention the issue to a reporter during an interview during the strike. However, I do not find these omissions to be determinative of the cause of the strike in the circumstances here when the Union repeated certain information requests to Respondent towards the end of negotiations before the strike, the requested information was necessary to evaluate issues that were central to the dispute, Minor informed the membership the day before the strike that he was going to file an unfair labor practice charge, filed said charge the morning of the strike before the strike started, and informed Busler that the charge had been filed before the strike had started. Moreover, Minor informed Respondent's officials during the first meeting after the start of the strike on May 15 that the employees were engaged in an unfair labor practice strike.[75] Accordingly, I find that the strike beginning on May 6, was caused, in substantial part by Respondent's unfair labor practice strikers, and that the individuals named in paragraph 6(b) and (c) of the complaint with the exception of William Jones, whose name was withdrawn by counsel for the General Counsel, were unfair labor practice strikers.

3. The unfair labor practice strike did not convert to an economic strike

In order for an unfair labor practice strike to revert to an economic strike, the employer's efforts at repudiation of its unlawful conduct must either cure the unfair labor practice, or otherwise succeed in removing it as a factor in prolonging the strike. See, *Outdoor Venture Corp.,* 327 NLRB 706, 709 (1999); *F.L. Thorpe & Co.,* 315 NLRB 147, 151, fn. 11 enf. denied on other grounds 71 F.3d 282 (8th Cir. 1995); and *Chicago Beef Co.,* 298 NLRB 1039 (1990), enfd. Mem. 944 F.2d 905 (6th Cir. 1991).[76]

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[75] See*, Gas Spring Co.,* supra. at 100; *Lifetime Door Co.*, 179 NLRB 518, 522-523 (1969); and *Head Division, AMF,* 228 NLRB 1406 (1978), enfd. 593 F.2d 972, 979-982(10th Cir. 1979), where similar omissions from picket signs were not held to preclude unfair labor practice strike findings. I find cases cited by Respondent such as *California Acrylic Industries v. NLRB,* 150 F. 3d 1095 (9th Cir. 1998), to be distinguishable from situation here. There the strike occurred two weeks after an unlawful video taping incident, which a union official mentioned during a pre-strike meeting. The court, in reversing the Board, concluded given statements on the picket signs and to a reporter, as well as other factors, that the circumstances there failed to establish that the videotaping had a causal relationship to the strike. In the instant case, Union officials repeated long standing information requests to Respondent's officials shortly before the May 5, ratification meeting, the requested information went to the heart of the issues in dispute, failure to provide the information was discussed during the contract ratification meeting, and Respondent set a deadline for acceptance of its offer on penalty of withdrawal of said offer without providing the requested information to allow the Union to better explain the offer to its membership. The timing of the events, and the close relationship between the requested information and the matters in dispute, as well as the credited testimony of the General Counsel's witnesses establish a causal relationship between Respondent's unfair labor practices and the strike.

[76] There is no contention here that Respondent cured the unfair labor practice under the

Continued

I do not find that Respondent's provision of most of the requested information after the Union filed its unfair labor practice charge on May 6, to have converted the strike to an economic strike. On March 15, Minor sent to Respondent an letter requesting information, including "a copy of the contract on hospitalization and medical coverage and the monthly premiums for single and family coverage;" and "a copy of the pension/401(k) contract and the cost contribution for the same." On April 5, Minor informed Respondent's committee that he had requested information on medical costs, and stated that it was not provided. On April 5, Van Almen verbally requested quality, scrap, and productivity numbers for the Plating plant. On April 15, Minor renewed the Union's request for productivity information. On April 29, Minor informed Respondent's committee that he had requested information on the pension plan, during the term of the last contract, and that he had renewed his request last month and it was not provided. On the evening of April 30, Minor citing coverage disputes involving union committee members Busler and Van Almen requested copies of Respondent's medical plans, and the formulary drug lists for those plans. Lemin acknowledged the Union had been requesting copies of the health care plans since 2000, with no contention that they had ever been provided. Niebauer acknowledged that Minor stated several times in reference to a grievance that Minor had been requesting the health care plans for a long time. Lemin's notes for the evening of April 30, reveal that Minor stated he had asked for the cost of health insurance and not received it. On the afternoon of May 1, Respondent read Gora's letter to the Union stating the Respondent's final offer was attached, and that if it was not accepted by May 5, it would be withdrawn and replaced by less favorable offers. On May 2, Van Almen told Wright that Respondent had not given the Union the health care information and costs the Union had asked for. Thus, when the Union conducted its contract ratification meeting, on May 5, it had not been provided with any of its requested information, although some of it went to the heart of some of the principle matters in dispute. For the reasons set forth above, I have concluded that the May 6, strike was an unfair labor practice strike.

During the parties' May 15, negotiation session, Jordan asked Minor what information he had received from his March 15 letter. Minor said none of it. By letter dated May 17, Lemin sent Minor some of the information requested in the March 15 letter. Included in the attached items is a document entitled, "Kaiser Foundation Health Plan of Ohio". Thus, while Respondent provided the Kaiser plan, it failed to provide the Aetna plan, although all of its witnesses who attended the April 30 meeting testified Minor requested both the master medical plans on that date.[77] Minor responded by letter of May 23, stating Lemin's May 17, response had omitted certain requested information. Minor described the information as: a copy of the Aetna Managed Choice Plan, the pension and 401(k) plans, and production records requested on April 5, and the ISO 9000 form requested on April 15. It was also represented in the letter that on April 30, the Union had requested information concerning emergency and non-emergency visits to Kaiser, and this was not provided. The parties met on May 28, at which point Respondent

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Board's *Passavant Memorial Area Hospital,* 237 NLRB 138 (1978) standards. There was no repudiation by the Respondent of its unlawful conduct, no notification to the striking employees that the requested information had been provided, and no assurances given against future unlawful conduct.

[77] I reject Respondent's argument in its brief that Minor's request for the health care plan contract as set forth in his March 15, letter was ambiguous, as it was abundantly clear by Minor's pronouncements during the April 30, meeting that he wanted both the insurance plans and medical costs. Moreover, Respondent provided the Kaiser plan in response to Minor's request, but failed to provide the Aetna plan further undermining its contention that it did not understand Minor's request.

altered its proposal concerning among other things wages and medical co-pay. The requested information in Minor's May 23, letter, aside from the productivity information was provided to Minor on May 31. Minor left town the next day on June 1 for a planned convention, and did not return until June 10. By letter dated June 12, and received by the Union on June 14, Gora notified the Union that Respondent had begun to hire permanent replacements. Gora stated in the letter, "I want to make clear that so far as the Company is concerned there are no offers outstanding or, if that is contrary to your understanding, all prior offers are hereby withdrawn.

In sum, the parties had 12 bargaining sessions prior to the start of the May 6, strike, with two sessions on May 1, one in the morning and one in the afternoon. The May 1, session culminated with the Respondent's presentation of its final offer to the Union. However, on the afternoon of May 1, Respondent informed the Union the offer would be withdrawn on May 5, if it was not accepted at that time, and would replaced with less favorable offers. Thus, after attending numerous bargaining sessions with the Union, Respondent presented the Union with the Hobson's choice of accepting Respondent's offer without providing the Union with information going to the core of the dispute with which to evaluate the offer, or reject the offer and suffer the consequences of less favorable offers in the future. Respondent's actions here clearly impeded the bargaining process. For although, Respondent's May 1, offer raised significant issues with the Union's bargaining committee, Minor was committed to take the offer to the membership. The membership was informed Respondent had not provided requested information, that the Union committee could not answer certain questions about the offer due to lack of information, and that the Union committee was not recommending the offer. The following day the employees went on strike. Respondent only began to respond to the Union's information requests after the Union filed its unfair labor practice charge and even then it provided the information in a piece meal fashion by ignoring verbal requests for information made during negotiations, although some of the requests were made late in the bargaining. I do not find Respondent's provision of the requested information following the filing of the unfair labor practice charge and only after the withdrawal of its outstanding offer converted the strike to an economic strike. It is clear, Respondent had in large part burdened and undermined the bargaining process by after numerous bargaining sessions presenting the Union its final offer with a deadline for that offer, without providing the Union the requested information necessary to evaluate that offer or to fully explain the offer to employees before they voted on the contract.[78] Accordingly, I find Respondent's belated provision of requested information did not convert the strike back to an economic strike.

The case *Mohawk Liqueur Co.,* 300 NLRB 1075 (1990), affd. 951 F.2d 1308 (D.C. Cir. 1991), cited by Respondent, is inapposite to the situation presented herein. There the respondent employer unlawfully withheld a COLA payment from its employees resulting in a finding that an ensuing strike was an unfair labor practice strike. However, during the course of the strike the employer tendered the withheld check directly to the employees. Shortly thereafter, a union membership meeting was held during which the initial withholding of the check was not mentioned as a reason for continuing the strike, and the minutes of the meeting failed to show that the initial withholding of the check played any role in the vote to continue the strike. As a result, it was determined that there was no nexus between Respondent's failure to

[78] In analogous situations the Board had found the unlawful declaration of impasse where a respondent employer has failed to provide requested information in time for a union fairly evaluate the employer's final offer. See, *Royal Motor Sales,* 329 NLRB 760, 764, fn. 14; and *Pertec Computer,* 284 NLRB 810, 812 (1987). Here, Respondent refused to provide requested information until after it withdrew its offer, supplied it in a piece meal fashion, and only did so after the Union filed an unfair labor practice charge.

completely remedy its unfair labor practice of initially withholding the check and the employees' decision to continue the strike. Thus, the strike was found to have converted to an economic strike. Unlike in *Mohawk Liqueur Co.,* there was no showing in the present case that the Union held a meeting with employees to discuss Respondent's belated provision of certain information, or that the employees were otherwise apprised that the Respondent had provided the Union with said information. Thus, Respondent has failed to show that its belated tendering of the information removed its unfair labor practice as a reason that the employees continued the strike. Particularly here, when it withdrew its offer prior to providing the requested information.[79] As Busler credibly testified, he viewed Respondent as having bargained in bad faith.

CONCLUSIONS OF LAW

1. The Respondent, Goodrich Corporation, Landing Gear Division, Cleveland Plating Operation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and its Local 2333, (referred to jointly as the Union) are a labor organizations within the meaning of Section 2(5) of the Act, and are the exclusive representative within the meaning of Section 9(a) of the Act of the following unit appropriate for the purposes of collective bargaining:

> All factory hourly-rated employees presently employed by the Respondent, in both production and maintenance categories, presently located at 2800 East 33rd Street, Cleveland, Ohio, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

3. By failing to bargain in good faith with the Union by failing and refusing to turn over to the Union, on request, in a timely fashion documents requested in the Union's March 15, 2002, written request for information, as well as information requested by the Union by verbal requests made during bargaining, which are necessary and relevant to collective bargaining, the Respondent has violated Section 8(a)(5) and (1) of the Act.
4. The strike, which commenced on May 6, 2002, was caused at least in part by the Respondent's unfair labor practices described above.
5. An unconditional offer to return to work was made by the Union on June 14, 2002, on behalf of all the unfair labor practice strikers.
6. By failing and refusing to reinstate of some and by delaying the reinstatement of other unfair labor practice strikers following their unconditional offer to return to work, Respondent has violated Section 8(a)(1) and (3) of the Act.
7. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it cease and desist therefrom, post an appropriate notice, and take certain affirmative action designed to effectuate the purposes and policies of the Act.

I shall recommend that Respondent be ordered to offer all striking employees reinstatement to their former positions or, if those positions no longer exist, to similar positions,

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[79] See *Outdoor Venture Corp.,* supra at 709, fn. 16; and *F.L. Thorpe, & Co.,* supra., at 151, fn. 11, where the Board distinguished *Mohawk Liqueur Co.,* supra., holding there was no evidence that other issues replaced the unfair labor practices as motivation for the strike.

without prejudice to their seniority and other rights and privileges previously enjoyed, dismissing if necessary replacement employees hired on or after May 6, 2002, and make whole all such striking employees for any loss of earnings they may have suffered from June 14, 2002, to the dates upon which Respondent unconditionally offers or has offered them reinstatement. The make whole remedy and interest shall be computed by paying all those striking employees whose reinstatement has been unlawfully delayed following the June 14, 2002, offer to return to work, or those who are initially reinstated as a result of this Order the sum of money equal to that which they normally would have earned had they been rehired on June 14, 2002,[80] less earnings during such period, to be computed in the manner prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest therein, in accord with *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

If after dismissing replacement employees there are insufficient positions available for all the remaining former strikers, those positions that are available shall be distributed among the strikers without discrimination because of their union membership or activities or participation in the strike, in accordance with seniority or other non-discriminatory practice used by Respondent. The Respondent will place any strikers for whom there are no positions available following the discharge of the replacement employees on a preferential hire list in accord with seniority or other non-discriminatory practice used by Respondent and they shall be reinstated before any other persons are hired. This latter group of strikers who are placed on a preferential hire list, should they exist, will not be entitled to back pay or otherwise be made whole upon their reinstatement, but their seniority rights will be restored upon their acceptance of an offer of reinstatement.[81]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[82]

ORDER

The Respondent, Goodrich Corporation, Landing Gear Division, Cleveland Plating Operation, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively with the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and its Local 2333, (referred to jointly as the Union) as the collective bargaining representative of its factory hourly-rated

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[80] This make whole remedy only applies to those strikers who were not initially reinstated within the 5-day period following the Union's June 14, 2002 unconditional offer to return to work. Since Respondent unlawfully rejected this group of strikers' unconditional offer to return to work, the 5-day period during which back pay is tolled, usually granted to employers is inapplicable. See, *Gas Spring Co.,* supra. at 101, fn. 48 (1989); *Drug Package Co.,* 228 NLRB 108, 114 (1977), enfd. in part 570 f.2d 1340 (8th Cir. 1978); *Newport News Shipbuilding,* 236 NLRB 1637, 1638 (1977), enfd. 602 F.2d 73 (4th Cir. 1979).

[81] The parties stipulated that any issues concerning an individual striker's right to reinstatement, back pay, and related items, under the terms of this order will be resolved in a compliance proceeding, absent settlement.

[82] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees employed in both production and maintenance categories at Cleveland Plating plant, by failing and refusing to turn over to the Union, on request, in a timely fashion documents requested in the Union's March 15, 2002, written request for information, as well as information requested by the Union by verbal requests during bargaining, and failing to comply in a timely fashion to any other information requests by the Union which are necessary and relevant to the performance of its statutory functions.

(b) Discouraging membership in the Union or any other labor organization by failing and refusing to reinstate and by delaying the reinstatement of unfair labor practice strikers upon their unconditional offer to return to work, and otherwise discriminating against its employees with regard to their hire, tenure, or other terms and conditions of employment.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union, on request, the following information relating to the Cleveland Plating plant: utilization information for 2001 and the formulary drug lists for the health insurance plans in effect and at the Cleveland Plating plant.

(b) Within 14 days from the date of this Order offer immediate and full reinstatement to all employees who participated in the unfair labor practice strike that commenced on May 6, 2002, and for whom an unconditional offer to return to work was made on June 14, 2002, to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any replacements hired during that strike. If after such dismissals there are insufficient positions available for the remaining former strikers, those positions that are available shall be distributed among them without discrimination because of their union membership or activities or participation in the strike, in accordance with seniority or other non-discriminatory practice used by the Respondent, with any remaining strikers for whom no employment is immediately available, following the discharge of all strike replacements, being placed on a preferential hiring list in accordance with seniority or other non-discriminatory practice used by the Respondent and those on that list shall be reinstated before any other persons are hired in positions for which they are qualified.

(c) Make whole, with interest, those unfair labor practice strikers, including those for whom Respondent delayed reinstatement, for any losses of earnings or benefits suffered as a result of Respondents conduct from the date(s) on which it is determined they should have been reinstated in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Plating facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."[83] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the

[83] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 5, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 21, 2004

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Eric M. Fine
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and its Local 2333, (referred to jointly as the Union) as the collective bargaining representative of the factory hourly-rated employees employed in both production and maintenance categories at Cleveland Plating plant, by failing and refusing to turn over to the Union, on request, in a timely fashion documents requested in the Union's March 14, 2002, written request for information, as well as information requested by the Union made by verbal requests made during bargaining, or by failing to comply in a timely fashion to any other information requests by the Union which are necessary and relevant to the performance of its statutory functions.

WE WILL NOT discourage membership in the Union or any other labor organization by failing and refusing to reinstate and by delaying the reinstatement of unfair labor practice strikers upon their unconditional offer to return to work, and otherwise discriminating against employees with regard to their hire, tenure, or other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL, on request, provide the Union with the following information relating to the Cleveland Plating plant: utilization information for 2001 and the formulary drug lists for the health insurance plans in effect at the Cleveland Plating plant.

WE WILL within 14 days from the date of the Board's Order offer immediate, unconditional and full reinstatement to all employees who participated in the unfair labor practice strike that commenced on May 6, 2002, and for whom an unconditional offer to return to work was made on June 14, 2002, to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any replacements hired during that strike. If after such dismissals there are insufficient positions available for the remaining former strikers, those positions that are available shall be distributed among them without discrimination because of their union membership or activities or participation in the strike, in accordance with seniority or other non-discriminatory practice used at the Cleveland Plating plant.

WE WILL make whole, with interest, those unfair labor practice strikers, including those for whom reinstatement was unlawfully delayed reinstatement, for any losses of earnings or benefits suffered as a result of our conduct from the date(s) on which it is determined they should have been reinstated in the manner set forth in the remedy section of the Board's decision.

WE WILL, within 14 days from the date of the Board's Order place any remaining strikers for whom no employment is immediately available, following the discharge of all replacements,

on a preferential hiring list in accordance with seniority or other non-discriminatory practice used at the Cleveland Plating plant and those on that list shall be reinstated before any other persons are hired in positions for which they are qualified. Those placed on the preferential hire list shall not be entitled to back pay, if and when they returned to employment, but upon reinstatement they shall be given full seniority rights.

GOODRICH CORPORATION LANDING GEAR
DIVISION, CLEVELAND PLATING OPERATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695, Cleveland, OH 44199-2086

(216) 522-3716, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-3723.

JD–92–04
Cleveland, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GOODRICH CORPORATION, LANDING
GEAR DIVISION, CLEVELAND
PLATING OPERATIONS

and Case No. 8-CA-33598-1

INTERNATIONAL UNION, UNITED
AUTOMOBILE AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW

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